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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 MARSH & MCLENNAN AGENCY LLC,

4 Plaintiff,

5 v.

19 CV 3837 (VSB)

6 ELMER "RICK" FERGUSON,

7 Defendant.

EVIDENTIARY HEARING

8 -----x

New York, N.Y.
October 2, 2019
11:10 a.m.

10 Before:

11 HON. VERNON S. BRODERICK,

12 District Judge

13 APPEARANCES

14 LITTLER MENDELSON

15 Attorneys for Plaintiff

16 BY: DOUGLAS A. WICKHAM

17 KEVIN K. YAM

DANIELLA ADLER

18 ELMER "RICK" FERGUSON, pro se

19 MOUND COTTON WOLLAN & GREENGRASS

Attorneys for ADR Provider Teros Advisors LLC,

Interested Parties Triad Advisors LLC,

and Resource Investment Advisors

20 BY: BARRY R. TEMKIN

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1 (Case called)

2 MR. WICKHAM: Good morning, your Honor.

3 Douglas Wickham on behalf of Littler Mendelson, for
4 the plaintiff.

5 THE COURT: Good morning.

6 MR. YAM: Kevin Yam from Littler, on behalf of MMA.

7 MS. ADLER: And also Daniella Adler, also from
8 Littler.

9 THE COURT: Okay.

10 MR. FERGUSON: Rick Ferguson, your Honor, *pro se*.

11 THE COURT: All right. You may be seated.

12 So we're here for a hearing on the application of
13 Marsh & McLennan for a preliminary injunction.

14 I understand there will be some witnesses. So let me
15 first ask, Mr. Wickham, how many witnesses do you have and who
16 are they?

17 MR. WICKHAM: We only have one live witness, your
18 Honor.

19 THE COURT: Okay.

20 MR. WICKHAM: That is Jeff Calder.

21 We also had provided to the clerk two additional
22 affidavits for Ms. Cam and Ms. Rosen that we've handed up.

23 THE COURT: Okay. And I have those affidavits. I
24 have not read them yet, so obviously I need to read them.

25 Have you provided copies of these to Mr. Ferguson?

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1 MR. WICKHAM: We have, your Honor.

2 THE COURT: Okay. Was that just this morning or had
3 you provided it to him at some other point in time earlier?

4 MR. WICKHAM: We provided them this morning. We only
5 had them signed late last night.

6 THE COURT: Understood.

7 Okay. So, Mr. Ferguson, the way that we're going to
8 proceed is I'm going to first ask Mr. Wickham to call their
9 witness. He'll have an opportunity to ask questions of
10 Mr. Calder. You'll also have -- once the testimony is done,
11 you'll have an opportunity to put on any witnesses that you
12 might have. Do you have witnesses?

13 MR. FERGUSON: Your Honor, I had requested a couple,
14 but they are under the control of MMA, so I do not have any
15 live witness.

16 THE COURT: All right.

17 Had you discussed -- are these folks who are in
18 California?

19 MR. FERGUSON: Correct, your Honor. But Jeff Calder
20 is here. He is one of them.

21 THE COURT: Okay.

22 And who are the others, just so that I know?

23 MR. FERGUSON: Bill Peartree.

24 THE COURT: Mr. Peartree.

25 MR. FERGUSON: Diane Rosen.

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1 THE COURT: And Ms. Rosen.

2 MR. FERGUSON: And Mara Crain.

3 THE COURT: All right.

4 I think that Ms. Crain has submitted an affidavit or
5 declaration. We just received something from Ms. Rosen. And I
6 don't believe that there -- had Mr. Peartree filed a prior
7 declaration?

8 MR. WICKHAM: No, your Honor.

9 THE COURT: All right.

10 There could have been a means by which -- and again,
11 I'm not opining as to whether a subpoena would have been
12 something -- I haven't given thought about the location of the
13 particular witnesses that would compel them to have to be here
14 for their testimony. But let me hear the testimony of
15 Mr. Calder. I may have some questions relating to the other --
16 Ms. Crain. And again, I haven't read Ms. Rosen's deposition,
17 but I did read Ms. Crain's affidavit.

18 Let me ask, is there anything that we need to deal
19 with preliminarily from the plaintiff? Mr. Wickham?

20 MR. WICKHAM: Because the case involves trade secret
21 misappropriation and the abuse or misuse of confidential
22 information, necessarily some of that information makes its way
23 into exhibits, solicitation messages and things of that nature.
24 Because Mr. Ferguson is unrepresented, we couldn't -- normally
25 we would designate all of that attorneys' eyes only; but

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1 because he's unrepresented, we haven't, so he's seeing it. But
2 we don't want to be in a position of any accusation that we've
3 waived our right to claim this information. I was thinking of
4 a couple of things on that though.

5 THE COURT: Okay. Let me make a proposal and see
6 whether this is consistent with what you were thinking.

7 To the extent there's testimony that you believe would
8 be -- that contains confidential information, what I typically
9 would do is give the parties a certain amount of time after the
10 transcript has been created, before it would be normally placed
11 on the docket, to review the transcript and propose redactions
12 for those things that you believe are confidential.

13 Similarly, with regard to documents that may be
14 offered or admitted, to the extent that there are portions of
15 those documents that you believe are confidential, I would also
16 similarly allow -- to the extent that you believe they are,
17 obviously indicate when they are being offered that you believe
18 it does contain confidential information. But I would also
19 allow you the opportunity, similar to the transcript, to go
20 through those and propose redactions for those things that you
21 believe are confidential, consistent with the way typically I
22 ask parties to redact them.

23 And I guess the other thing is I would suggest -- and
24 I don't know whether one had been negotiated -- and I
25 apologize, I didn't look back at the docket -- a

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1 confidentiality order, a protective order, actually, in
2 connection with this. I don't have a template on my docket. I
3 think Judge Koeltl may have one on his, on his website.

4 MR. WICKHAM: We have a protective order in the case,
5 your Honor.

6 THE COURT: Okay.

7 MR. WICKHAM: The things that you recommended are by
8 the book that have been accepted by other courts to protect
9 against that. My only additional thought -- and I'm just
10 putting this out there -- is whether or not an exclusion order
11 should be appropriate so that third parties aren't in the
12 courtroom when that information is being shared.

13 THE COURT: That's up to you. I know that -- I think
14 there's -- counsel for the third parties who have been
15 subpoenaed is here. And I apologize, your name is Mr. --

16 MR. TEMKIN: Good morning, your Honor.

17 Barry Temkin, T-E-M-K-I-N; Mound, Cotton, Wollan &
18 Greengrass, for Triad, RIA, and Teros.

19 THE COURT: All right. So I don't have a problem if
20 you believe that -- because obviously -- I don't know, the
21 other folks who are here, are they with -- I apologize.

22 MR. WICKHAM: They are with Marsh & McLennan, your
23 Honor.

24 THE COURT: Okay.

25 So, Mr. Temkin, there may come a time, I think, and it

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1 depends upon the testimony -- if you believe, Mr. Wickham, that
2 there's going to be testimony that's going to require the
3 disclosure of confidential information, Mr. Temkin, I may ask
4 you to step out for a moment and then we can do -- what I would
5 ask though, Mr. Wickham, if you could try and -- I know this is
6 not easy when you're examining a witness, but try and load that
7 into one place in the examination, and that way Mr. Wickham
8 doesn't have to keep getting up and coming in and out of the
9 courtroom.

10 MR. WICKHAM: Absolutely, your Honor. It's actually
11 organized in that manner.

12 THE COURT: All right.

13 So thank you. Is that okay, Mr. Temkin?

14 MR. TEMKIN: That's fine.

15 And, your Honor, my clients are regulated by the
16 Securities and Exchange Commission, so I would comply with Reg.
17 S-P and all confidentiality obligations.

18 THE COURT: Okay. I think in some of these -- I
19 think -- as I understand it, what I think Mr. Wickham is more
20 referring to is information that's not only confidential with
21 regard to securities transactions and other things, but
22 confidential with regard to specifically his client --

23 MR. TEMKIN: Yes.

24 THE COURT: -- internally.

25 MR. TEMKIN: Yes. That's covered by SEC regs., by

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1 Reg. S-P. So we would maintain that and abide by your Honor's
2 rulings.

3 THE COURT: Okay. Oh, okay. All right. That's fine.

4 Thank you.

5 MR. TEMKIN: Thank you, your Honor.

6 THE COURT: All right.

7 So, Mr. Ferguson, what we were just talking about is
8 just, sort of, housekeeping, just to make sure that when the
9 record of this hearing is created, that only those things --
10 and again, I'm not at all ruling one way or the other whether
11 or not the materials that Mr. Wickham is going to be referring
12 to, whether they, in fact, qualify as confidential information
13 consistent with the law and the agreements.

14 But what I'm saying is I will allow Mr. Wickham to --
15 and counsel for the plaintiff to review the transcript and to
16 make recommendations to me, at least preliminarily, what things
17 that they believe should be redacted. And again, obviously
18 that's all contingent upon the ultimate ruling on that
19 particular issue. So some things might initially be filed
20 redacted, but later, because of a decision I reach, unredacted.
21 And I'm not saying that's going to occur, I'm just alerting you
22 that I'm not making a final ruling with regard to that. But
23 once something is out in the public domain, once it's filed on
24 the docket publicly, it becomes harder to, sort of, as they
25 say, unring that bell. Okay?

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1 MR. FERGUSON: I understand, your Honor.

2 THE COURT: Do you have any questions?

3 MR. FERGUSON: Housekeeping, your Honor.

4 THE COURT: Yes.

5 MR. FERGUSON: The documents that I had submitted
6 previously --

7 THE COURT: Yes.

8 MR. FERGUSON: -- same exact documents, some of the
9 tabs were mislabeled. I do have a corrected version, if I can
10 approach the bench.

11 THE COURT: Sure. You may.

12 Do you have an extra set for --

13 MR. FERGUSON: And I've given --

14 THE COURT: Okay.

15 MR. FERGUSON: -- the plaintiffs an extra set.

16 THE COURT: Okay.

17 MR. FERGUSON: Same documents, just different tabs.

18 THE COURT: All right.

19 Just so that we know everybody will be -- so everyone
20 will be using in connection -- if you're going to refer to any
21 of the documents that Mr. Ferguson, you'll be using the tab
22 designations from -- well, we can just take it by ear.

23 MR. FERGUSON: Your Honor?

24 THE COURT: Yes.

25 MR. FERGUSON: May I approach the bench?

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1 THE COURT: You may.

2 MR. FERGUSON: My apologies. I gave you my set.

3 THE COURT: Oh, okay. I don't want to -- all right.

4 MR. FERGUSON: Thank you.

5 THE COURT: Okay. Anything else, Mr. Ferguson?

6 MR. FERGUSON: No, your Honor. Except that obviously
7 I'm not an attorney, so I apologize in advance to the Court, to
8 the plaintiff, to witnesses, if I make a mistake.

9 THE COURT: That's fine. It's just me; there's no
10 jury. So in terms of leeway with regard to questioning, I'll
11 obviously take into account that you're appearing *pro se*, and
12 so that's fine. I understand.

13 Okay. Mr. Wickham, anything preliminarily?

14 Anything else?

15 MR. WICKHAM: Just one last matter, your Honor.

16 THE COURT: Yes.

17 MR. WICKHAM: Do you have our set of the exhibit
18 binder?

19 THE COURT: I do. Yes, I do.

20 MR. WICKHAM: Okay. And I already left a copy for the
21 witness on the witness stand.

22 THE COURT: All right.

23 Your first witness.

24 MR. WICKHAM: Okay.

25 Do you want opening remarks of any sort?

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Opening - Mr. Wickham

1 THE COURT: If you'd like. They should be brief. I'm
2 not sure -- I think what may make -- why don't you go ahead.
3 If you prepared some opening remarks, that's fine.

4 MR. WICKHAM: Just very briefly, your Honor.

5 THE COURT: All right.

6 MR. WICKHAM: This Court previously has visited this
7 case a few times for various discovery motions and things of
8 that nature. But back in June, when the Court examined the
9 plaintiff's temporary restraining order papers, the Court had
10 determined that there had been sufficient information there to
11 support the existence of a restraining order pending the time
12 that the parties were able to appear and provide additional
13 evidence at this preliminary injunction hearing.

14 The materials that we have in our original complaint,
15 the materials in our brief, first of all, the evidence on there
16 is fairly substantial in terms of what we believe to be acts of
17 breach of contract, breach of duty of loyalty and things of
18 that nature, by a departing employee who, both during his
19 employment with Marsh & McLennan and afterwards, was soliciting
20 clients in order to leave Marsh & McLennan while he's subject
21 to duties of loyalty to the company, while using confidential
22 information and trade secrets. That has not abated, even after
23 he had been sent several cease and desist letters and
24 communications to him. We believe, even after this Court had
25 issued the restraining order, that this activity had continued.

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Opening - Mr. Wickham

1 We did not file a OSC to seek to hold him in contempt.
2 We were anticipating, relatively speaking, soon to have been
3 before the Court on the preliminary injunction hearing, because
4 the most recent activity -- at least that we're aware of -- had
5 transpired in July, and we were supposed to have the hearing in
6 July. Unfortunately, that continued and so we're here today.

7 But the scope of this really actually took a more
8 significant turn just last week, when Mr. Ferguson responded to
9 the written discovery that had been previously ordered by the
10 Court. And the information that was revealed in documents that
11 Mr. Ferguson, to his credit, produced, shows that there was an
12 extensive plan and deliberation between Mr. Ferguson and what
13 we had believed to be his new employer, Teros, as they were
14 planning and organizing a wholesale raid of all the clients to
15 which Mr. Ferguson had a relationship, and seemingly many more.

16 Originally, in our TRO papers we had indicated that
17 we've lost five clients. At this point in time, the number of
18 clients is about 15 or 16 that Marsh has lost. The number of
19 clients that Mr. Ferguson took information about spans a much
20 larger subset. So 20, 30, 40, 50 clients appear to be on his
21 potential radar. And so for our part, the point of an
22 injunction is to maintain the status quo.

23 We want Mr. Ferguson to stop. We don't want our
24 clients to continue to be subject to solicitation. We don't
25 want our confidential information, trade secrets to be

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Opening - Mr. Wickham

1 misappropriated. We're more than happy and looking forward to
2 going to trial on this matter to prove those things. But
3 between now and the trial, we do need the benefit of a
4 preliminary injunction to ensure that the status quo will not
5 be further negatively impacted by Mr. Ferguson's activities.

6 THE COURT: Okay.

7 MR. WICKHAM: So for our part, we're going to bring on
8 Mr. Calder. He had signed a declaration in support of the
9 temporary restraining order. For the most part, his testimony
10 is going to be consistent with that, but it's going to have
11 embellishments because he's going to be talking about some of
12 the actual clients that he was interacting with as he was
13 discovering live, in real time, Mr. Ferguson's activities and
14 the solicitations.

15 Mr. Calder will also be talking about the appreciation
16 and understanding of the confidentiality obligations at Marsh
17 and at its predecessor, Barney & Barney. So Mr. Calder, who
18 was Mr. Ferguson's supervisor, should be able to bring that
19 home very clearly and for the benefit of the Court. And
20 obviously he'll be available for what questions that the Court
21 has.

22 THE COURT: I think I will have certain questions
23 relating to the clients that the plaintiff believes that
24 Mr. Ferguson had solicited, what products they had purchased
25 and/or were in the market for. So I will have certain

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Opening - Mr. Ferguson

1 questions. It may come out during the examination, but I will
2 have some questions about that, including questions about
3 confidentiality and things like that, the materials that the
4 company views as confidential.

5 Okay.

6 MR. WICKHAM: Thank you, your Honor.

7 THE COURT: Mr. Ferguson, would you like to say
8 anything as preliminary remarks?

9 MR. FERGUSON: Thank you, your Honor.

10 Obviously there are two sides to every story. I think
11 today we'll see I was told to do these things. And the
12 questioning of the witness, I think it will come out.

13 There's a lot of things that the plaintiff has not
14 informed the Court of, like they've already filed these claims
15 with FINRA; the exact same claims were made as a complaint to
16 FINRA. It's still an open case. I've been fighting this on
17 two different fronts.

18 So I think we'll see the other side of the story
19 today.

20 THE COURT: Okay. Let me ask, Mr. Wickham, are you
21 representing your client in the -- well, is there currently
22 something before FINRA, when was it filed, and are you
23 representing Marsh in that matter?

24 MR. WICKHAM: As part of Mr. Ferguson's separation,
25 he's an employee of Marsh & McLennan Agency, and he has his

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1 license with Marsh & McLennan Securities.

2 THE COURT: Yes.

3 MR. WICKHAM: As part of MMAS's separation paperwork,
4 when you have an individual, a licensed individual, who is
5 leaving under circumstances involving a fairly serious matter
6 under FINRA regulations concerning misappropriation of client
7 information, it's a required disclosure. And so in connection
8 with a required disclosure by MMAS, MMAS did submit a
9 disclosure to FINRA.

10 MMAS is not prosecuting any sort of a claim before
11 FINRA; MMAS hasn't filed an arbitration before FINRA. The
12 thing that is going on that I believe is that FINRA is
13 conducting an independent investigation that was triggered by
14 disclosures that MMAS made to FINRA.

15 Mr. Ferguson has produced documents showing that FINRA
16 was pursuing its investigation, asked him some questions; they
17 asked MMAS some supplemental disclosures. But there's not some
18 sort of a separate FINRA proceeding being prosecuted by MMA or
19 MMAS.

20 THE COURT: Okay. But I mean there's no -- I think --
21 I'm not sure with Mr. Calder, but it seems like Mr. Peartree
22 also is a registered representative. And so I guess what my --
23 some of my questions may relate to in connection with
24 Mr. Ferguson's employ, was he basically wearing more than one
25 hat. In other words, was he doing things that would ordinarily

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1 be covered by FINRA; in other words, selling products that
2 would be covered under -- understanding that someone could be
3 licensed and other things, but not necessarily doing that work
4 at his or her job. But because of the licensure -- and I
5 assume this is what you're saying, that MMA Securities felt
6 they had to make that call.

7 But I guess the question is how -- so how did they --
8 what was Mr. Ferguson's relationship to MMA Securities. And
9 that's the dual hat sort of thing I was talking about.

10 But I think perhaps it makes sense for Mr. Calder to,
11 sort of, speak to that and, sort of, how Marsh treats folks
12 that are in this position, understanding that, I think, right,
13 there's a cleave between the securities stuff and the other
14 work that they may do. But are there people who actually, sort
15 of, operate or sell products that could be on both sides of
16 that.

17 MR. WICKHAM: And we will be touching upon that.

18 Very briefly, the answer is yes, that for a period of
19 time toward the tail end of when Barney & Barney was a separate
20 entity, and during the early period of time when just after MMA
21 acquired Barney & Barney, Mr. Ferguson was a client executive
22 sales and his job was to sell, to develop business and things
23 of that nature. In 2014, Mr. Ferguson then returned to the
24 service side of the business.

25 With investment advisers, unlike brokers and dealers

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Calder - direct

1 and things like that, these are not individuals who are engaged
2 on a regular basis in stock trades and things of that nature.
3 So in the investment adviser world, the idea that you can have
4 hybrid individuals is more often the case. As a matter of
5 fact, there's a number of cases that deal with that.

6 In our situation, at all times Mr. Ferguson initially
7 was a Barney & Barney employee; and then later, after the
8 acquisition, he was an MMA employee. And then his
9 registration, his licensure, was initially with SagePoint, and
10 then there were a few other entities, and then his final
11 licensure was with MMAS.

12 Mr. Ferguson has a different interpretation of that,
13 and will have the benefit of Mr. Calder's testimony on what, at
14 least from the company's perspective, is accurate.

15 THE COURT: Okay. All right.

16 All right. You can call Mr. Calder.

17 MR. WICKHAM: Jeff Calder.

18 THE COURT: I think he may be -- oh, here he is.

19 JEFFREY CALDER,

20 called as a witness by the Plaintiff,

21 having been duly sworn, testified as follows:

22 THE COURT: You may proceed.

23 DIRECT EXAMINATION

24 BY MR. WICKHAM:

25 Q. Good morning, Mr. Calder.

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Calder - direct

1 First of all, I'd like you to get comfortable with the
2 binder of exhibits there, and maybe move your water bottle to a
3 different place so that that doesn't get knocked over.

4 THE COURT: That's fine.

5 Q. Okay. Would you please state and spell your name.

6 A. My name is Jeffrey Thomas Calder. J-E-F-F-R-E-Y,
7 T-H-O-M-A-S, C-A-L-D-E-R.

8 Q. And where are you currently employed?

9 A. I am currently employed with Marsh & McLennan Agencies.

10 Q. And geographically, where are you based?

11 A. I'm based in the San Francisco Bay area.

12 Q. And what's your current job title?

13 A. I'm the managing director of the Marsh & McLennan Agency
14 operation in San Francisco and in Walnut Creek.

15 Q. And how long have you been in that position?

16 A. I've been in that position for -- since January of this
17 year. Prior to that, I was the division director for employee
18 benefits in the same geography.

19 Q. Okay. And before you worked with Marsh & McLennan, did you
20 work for another company?

21 A. Yes. Prior to Marsh & McLennan, I was working for Barney &
22 Barney. We're a regional insurance brokerage and we sold to
23 Marsh & McLennan in 2014.

24 Q. Okay. In connection with that acquisition, did you then
25 move from working for Barney & Barney to working for MMA?

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Calder - direct

1 A. I did.

2 Q. And then just for your reference, are you comfortable in
3 referring to Marsh & McLennan Agency as "MMA"?

4 A. I am.

5 Q. Okay. Now, how do you know Rick Ferguson?

6 A. I know Rick because he was transferred to the San Francisco
7 office to be part of the retirement services division, our
8 first employee in the retirement services division. He came to
9 work up in San Francisco in about 2012.

10 Q. Okay. And did that occur when he was -- when you and he
11 were working for Barney & Barney?

12 A. Yes.

13 Q. Okay. Now, and once Mr. Ferguson transferred to the San
14 Francisco Bay area, who was his supervisor?

15 A. I was.

16 Q. Okay. And were you his supervisor from that time, up until
17 the time that he separated from the company?

18 A. Yes.

19 Q. Let me ask you to take a look at some exhibits by way of --
20 to set some background here. If you could please look under
21 Tab No. 1. Do you have it open?

22 A. I do.

23 Q. Have you seen this document before?

24 A. I have.

25 Q. Could you tell me what this document is?

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Calder - direct

1 A. This is an employment agreement between Barney & Barney and
2 Rick Ferguson.

3 Q. Okay. At Barney & Barney, were you familiar with employee
4 agreements of this nature?

5 A. I was. I signed one as well.

6 Q. Okay. And so far as you know, were all Barney & Barney
7 employees required to sign employee agreements of this nature
8 when they first started with the company?

9 A. Yes.

10 Q. Okay.

11 THE COURT: Just one second.

12 Mr. Ferguson, do you have a --

13 MR. FERGUSON: No, your Honor.

14 THE COURT: Do you have an extra set of the exhibits?
15 Thank you very much.

16 So, Mr. Ferguson, we are on Exhibit 1.

17 MR. FERGUSON: Thank you, your Honor.

18 THE COURT: Sorry.

19 MR. WICKHAM: We also had sent him the exhibits as
20 well.

21 THE COURT: No, no, I understand. But there may have
22 been, you know, between Mr. Ferguson and his former counsel and
23 him coming here, so I understand. I appreciate having an extra
24 copy. Go ahead.

25 MR. WICKHAM: Thank you, your Honor.

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Calder - direct

1 BY MR. WICKHAM:

2 Q. Mr. Calder, if you could turn to paragraph 6 on the second
3 page of this document. Do you see that there?

4 A. I do.

5 Q. Do you know what this paragraph is or what it does?

6 A. This is a paragraph that talks about the confidentiality of
7 our information that we keep for our clients. It talks about
8 what we do. And it says that we have to protect this
9 confidential information.

10 Q. Okay. And so is this a broad confidentiality obligation
11 that all Barney & Barney employees were subject to during and
12 in connection with their employment?

13 A. It is.

14 Q. Okay. And was this confidentiality obligation one that not
15 only applied when they worked there, but also after they left
16 Barney & Barney?

17 A. Confidentiality agreement was enforceable for up to two
18 years after they left the company.

19 Q. Okay. Let me ask you to take a look at Exhibit 3.

20 THE COURT: Let me ask a question, just a logistical
21 question, with regard to the exhibits that both sides are going
22 to show to witnesses.

23 Are the parties stipulating to their authenticity and
24 admissibility? In other words -- and you may go document by
25 document; but, as a general matter -- obviously, Mr. Wickham,

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Calder - direct

1 you've seen the documents that Mr. Ferguson may show witnesses.
2 I'm just trying to figure out whether -- how much I need to
3 hear from witnesses with regard to authenticating and the like.

4 MR. WICKHAM: Your Honor, we're fine with stipulating
5 to authenticity and admissibility, but reserving all other
6 objections.

7 THE COURT: Okay.

8 So Mr. Ferguson, that's just so that we don't have to
9 go through the exercise, for example, of asking Mr. Calder to
10 look at this document, look at the final page, has he seen it
11 before, how does he recognize it. In other words, establishing
12 that it is what plaintiff's counsel is saying it purports to
13 be, and that it is an authentic document, we're reserving any
14 objections to the document, for example, if it was hearsay
15 within -- some sort of other objection within the document,
16 reserving those. But we can go document by document.

17 First, I guess I'll ask, Mr. Ferguson, do you have an
18 objection to the Exhibit 1, which purports to be your
19 employment agreement with Barney & Barney?

20 MR. FERGUSON: No, your Honor.

21 THE COURT: Okay. All right. Go ahead.

22 BY MR. WICKHAM:

23 Q. Mr. Calder, would you turn to Exhibit 3 and please review
24 that. Do you recognize Exhibit 3?

25 A. I do.

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Calder - direct

1 Q. And what is Exhibit 3?

2 A. It is a Barney & Barney and MMA document. It is a
3 nonsolicitation and confidentiality agreement.

4 Q. Now, when MMA acquired Barney & Barney, were all employees
5 at Barney & Barney at that time required to sign a
6 nonsolicitation and confidentiality agreement like what you
7 have in front of you under Exhibit 3?

8 A. Yes.

9 Q. And this Exhibit 3, if you look at the last page, what
10 Mr. -- well, with his signature on the end --

11 THE COURT: We can just -- Mr. Ferguson, do you object
12 to Exhibit 3 as being the employment agreement that was
13 subsequently signed between Barney & Barney and MMA?

14 MR. FERGUSON: Your Honor, this is not the original
15 document.

16 THE COURT: When you say it's not the original --
17 well, do you know what? When you say it's not the original
18 document, what do you mean?

19 MR. FERGUSON: I actually have a line of questioning
20 on that. This is not the original document.

21 THE COURT: Okay. Then what I propose is -- well,
22 I'll allow you, Mr. Wickham, to ask your questions, and it will
23 be admitted subject to any examination that -- normally I would
24 allow a voir dire, but I'll wait until you want to do your
25 examination, and then until I decide whether or not I'm going

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1 to consider it.

2 MR. WICKHAM: Thank you, your Honor.

3 THE COURT: Okay?

4 MR. FERGUSON: Thank you.

5 BY MR. WICKHAM:

6 Q. So going back to my question, Mr. Calder, when all of the
7 Barney & Barney employees came and became MMA employees as part
8 of the acquisition, were they all required to sign
9 confidentiality agreements?

10 A. Yes.

11 Q. Okay. Were they all required to sign confidentiality
12 agreements of what appears before you under Exhibit 3?

13 A. Yes.

14 Q. Okay. Now, looking at Exhibit 3, starting with paragraph
15 1, do you see that there?

16 A. I do.

17 Q. And could you tell me what paragraph 1 covers, as far as
18 you understood?

19 A. Paragraph 1 covers confidential information and trade
20 secrets; it talks about what that information is; it talks
21 about the fact that this is our information, and that it is to
22 be protected.

23 Q. Okay. And did you understand that this provision
24 prohibited employees from disclosing and using confidential
25 information in connection with their employment at Marsh &

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1 McLennan Agency?

2 A. Yes.

3 Q. Okay. And did you understand that this provision
4 prohibited employees from using and disclosing Marsh & McLennan
5 Agency information after they had left MMA?

6 A. Yes.

7 Q. I want to also draw your attention to the very first line
8 of the document at the top, where it says, Agreement dated as
9 of 2/1, etc., Barney & Barney, a Marsh & McLennan Agency
10 company, and subsidiaries thereof. Do you see that there?

11 A. I do.

12 Q. Okay. Did you understand that when this agreement was
13 presented to you and to others over which you've supervised,
14 that this was not limited just to MMA, it covered all of the
15 companies within the Marsh group -- family of companies?

16 A. Yes.

17 Q. Okay. Did you also understand that this agreement had
18 certain limitations on the solicitation of clients? And I'm
19 specifically referring to paragraph 2 on page 3 of this
20 document.

21 A. Yes.

22 Q. Okay. And what was your understanding concerning
23 limitations on solicitation?

24 A. Limitation on solicitation is is that we could not use
25 confidential information or trade secrets to solicit clients in

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1 the first 24 months after termination.

2 Q. And then also I'd like to turn your attention to paragraph
3 1 -- by the way, the limitation that you describe, is that is
4 what appears in exhibit -- paragraph 2(a) and 2(b) of the
5 agreement?

6 A. Yes.

7 Q. Okay. And then finally, if you could please review
8 paragraph 1(d), as in "dog." It's also on page 3.

9 A. Yes.

10 Q. What did you understand that that prohibited or what that
11 regulated?

12 A. That regulates the use of our systems and the
13 confidentiality of the client information within our system.
14 And it talks about the fact that you may not download that --
15 you couldn't download that information; any information in the
16 system is our information; you can't use that information for
17 personal gain or to solicit clients.

18 Q. Okay. So, for example, if there was information on the
19 company's computer systems or an individual employee's
20 computer, would this clause, so far as you understood it,
21 prohibit the employee from using and disclosing that
22 information for their own personal gain?

23 A. Yes.

24 Q. Okay. Now, there is some question about Mr. Ferguson's
25 employment status. And I want to find out whether you have

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1 information on that subject.

2 First of all, from the time of the Barney & Barney
3 acquisition, up through the present, have you always been an
4 MMA employee?

5 A. I have.

6 Q. Okay. From the time of the acquisition, up to the time
7 that Mr. Ferguson departed, do you have information about who
8 his employer was?

9 A. Yes.

10 Q. Okay. Why do you have information about who Mr. Ferguson's
11 employer was?

12 A. Well, Mr. Ferguson was an employee of Marsh & McLennan
13 Agency; he was paid by Marsh & McLennan Agency. He paid taxes
14 through Marsh & McLennan Agency; we paid taxes on his behalf.
15 He was our employee. We did employee reviews.

16 Q. Okay.

17 THE COURT: Did he have responsibility for selling
18 products that would typically be sold by an individual who is
19 regulated by FINRA?

20 THE WITNESS: He did.

21 THE COURT: So securities-type products?

22 THE WITNESS: Yes.

23 THE COURT: Okay. In connection with that, are you
24 also licensed to sell securities products?

25 THE WITNESS: I am not. I was 30 years ago. I don't

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1 think it counts.

2 THE COURT: No. All right.

3 So in connection with that, when Mr. Ferguson, let's
4 say he was involved with a client and -- well, let me ask, did
5 Mr. Ferguson have the ability to sell those products throughout
6 the time period that you were supervising him?

7 THE WITNESS: Yes.

8 THE COURT: Okay. And in connection with that, if you
9 were to do that, would you still be his supervisor or would
10 someone else at MMA Securities or someone else have to look at
11 that particular transaction because it was securities related?

12 THE WITNESS: I'm not an expert in the FINRA
13 regulations.

14 THE COURT: Sure.

15 THE WITNESS: I know that I had responsibility for
16 Rick as an employee of MMA. I also know that MMA has their --
17 all their licensure in compliance with MMA Securities.

18 THE COURT: Okay. Let me ask a question just about
19 Exhibit 3. I take it you have -- you also have a similar
20 agreement?

21 THE WITNESS: I do.

22 THE COURT: And in connection with that, if you look
23 at Exhibit 3, do you see at the top of page 2, it says page 2;
24 top of page 3, it says page 3; same thing on page 4. But then
25 from 4 to page 5 through 8, the way that the page numbers are

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1 referenced changes. So you see it's now at the bottom, it says
2 page 5 of 9.

3 Does your agreement similarly have that change, in
4 other words, the way that the page numbers appear?

5 THE WITNESS: I have no idea.

6 THE COURT: Okay.

7 Do you know why there's this -- why there's this
8 change?

9 THE WITNESS: I do not.

10 THE COURT: In addition, on page 5 of 9, you'll see
11 that there's a footer at the bottom which says "World Class.
12 Local touch." Do you have an understanding what that is about?

13 THE WITNESS: Yeah. That's kind of our motto.

14 THE COURT: Okay. But that motto doesn't appear on
15 pages 1 through 4; is that correct?

16 THE WITNESS: Correct.

17 THE COURT: Do you have an understanding why that's
18 the case?

19 THE WITNESS: I do not.

20 THE COURT: Okay.

21 Similarly, if you turn to page 9 of the document, the
22 signature page.

23 THE WITNESS: Yes.

24 THE COURT: You'll see that it returns to the
25 methodology, I guess, for lack of a better term, that appears

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1 earlier in the document, where the page number appears at the
2 upper left, and it says page 9.

3 Do you have an understanding of why -- well,
4 actually --

5 THE WITNESS: It goes back to --

6 THE COURT: Yes, it went back -- actually, if you look
7 at -- only page 5 has page 5 of 9. And then if you go to page
8 6, then it returns to the other designation; it has page 6 at
9 the top. You don't have an understanding of why this
10 document -- how it was created?

11 THE WITNESS: I don't.

12 THE COURT: Okay.

13 And you don't know whether yours is similar to this,
14 in other words, similar in appearance?

15 THE WITNESS: I don't know.

16 THE COURT: Okay.

17 What I would ask, Mr. Wickham, at some point after the
18 conference, if you could produce Mr. Calder's version of this
19 document. And by "this document," I'm just referring to the
20 Barney & Barney/MMA nonsolicitation and confidentiality
21 agreement.

22 MR. WICKHAM: We will, your Honor.

23 Just by way of a clarification and not by way of
24 anything -- misrepresentation or anything like that, the copy
25 of this -- of Mr. Ferguson's MMA agreement that is in his

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1 personnel file was missing the fill-in page here. I think it's
2 page 5. What appears on this -- the page 5 of this document is
3 the -- is the same provision, the same language, from the
4 firm's -- from MMA's standard form confidentiality agreement,
5 which was in Mr. Ferguson's, but it's just that we were able to
6 locate that page, put that in here for completeness' sake.

7 So that's why there is -- you see the logo at the top
8 and that the numbering is a little -- is out of sorts.

9 THE COURT: Okay.

10 MR. WICKHAM: But that is what the explanation is for
11 the additional -- the addition of this page.

12 THE COURT: All right.

13 MR. WICKHAM: But we will obtain Mr. Calder's
14 confidentiality agreement and supply that to the Court.

15 THE COURT: Okay. That would be great.

16 Sorry for the interruption. Go ahead.

17 MR. WICKHAM: One other point, your Honor.

18 THE COURT: Sure.

19 MR. WICKHAM: We were focusing our questions only on
20 paragraphs 1 and 2 of the agreement, which indisputably are
21 part and parcel of the original agreement. So we weren't even
22 touching upon what is on page 5.

23 THE COURT: Okay. No, I understand. But -- I
24 understand that.

25 MR. WICKHAM: Okay.

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1 BY MR. WICKHAM:

2 Q. Okay. Mr. Calder, the judge wanted some information about
3 Mr. Ferguson's employment history. So let me just touch upon
4 that.

5 Are you familiar that when he had originally started
6 out with Barney & Barney, that he was on the service side of
7 the business?

8 A. Yes.

9 Q. Okay. And without getting into too much technical
10 expertise of that, could you just generally describe what the
11 service side of the business is?

12 A. Yes. On our retirement services business, we have clients
13 who have engaged us to provide retirement plans, be those
14 401(k) plans, 403(b) plans, various kinds of plans for
15 employees to use in their retirement, to save, and for
16 employers to use to attract employees.

17 So in the role of a client service executive,
18 Mr. Ferguson would -- and all of our client service
19 executives -- work with confidential client information to help
20 our clients get the type of retirement plan that they would
21 want for their employees. Then they help communicate those
22 plans, they help keep those plans in compliance, and they help
23 with any service needs that employers may have.

24 Additionally, they hold open enrollment meetings where
25 they go through the plan options with employees and make sure

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1 they understand the plans they have.

2 Q. Now, within the retirement services division in which
3 Mr. Ferguson was employed, are there also another category of
4 employees who have the title or similar title to client
5 executive sales?

6 A. Yes.

7 Q. Who are they?

8 A. They are the people who are responsible for initiating a
9 claim, initiating new business. So they're responsible for
10 working with centers of influence, entertaining, making
11 contacts within the industry, and obtaining new clients for
12 MMA.

13 Q. Okay.

14 So the people who are client executive sales are
15 engaged in the sale of these types of retirement benefit plans;
16 is that right?

17 A. That's correct.

18 Q. And is that one of the reasons why they necessarily have to
19 have the security registration?

20 A. Yes.

21 Q. Okay.

22 Now, after Mr. Ferguson was in client executive
23 service, do you know whether or not he transitioned to client
24 executive sales?

25 A. He did. When he transferred to San Francisco, he

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1 transferred to a client executive sales position.

2 Q. Okay.

3 So when he was at Barney & Barney and he transitioned
4 from San Diego to the San Francisco Bay area, that also was in
5 connection with him moving into the client executive sales
6 position?

7 A. Correct.

8 Q. Okay.

9 Was there a point in time that Mr. Ferguson returned
10 to the client executive service position?

11 A. There was. In late 2014, Mr. Ferguson sent an email to
12 Bill Peartree requesting a return to the service side of our
13 business.

14 We took that into consideration. And as of January 1,
15 2015, Rick went back in as primarily a service person. He also
16 received compensation if he initiated a new piece of business.

17 Q. Okay. And from the time that he transitioned back to
18 client executive service until the time that he resigned from
19 MMA, did he remain a client executive service person throughout
20 that entire time period?

21 A. Yes.

22 Q. Okay.

23 So he never went back to the sales side; is that
24 right?

25 A. No.

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1 Q. Okay.

2 Now, I do understand that after he had transitioned
3 back, that he had some responsibility, continuing
4 responsibility, for clients and possibly was doing a little bit
5 of business development. Is that also true?

6 A. That is true.

7 Q. Okay.

8 But his position was client executive service --

9 A. Correct.

10 Q. -- right?

11 And he was paid as a client executive service. And he
12 was performing the duties of a client executive service?

13 A. Yes.

14 Q. Okay.

15 THE COURT: Well, let me ask if -- are there people
16 who that all they do is client executive service? In other
17 words, you said that Mr. Ferguson was primarily a person who
18 was involved in client executive services, but also got a
19 commission for sales.

20 THE WITNESS: So we had a hybrid-type position
21 where -- we have a number of salespeople in the bay area; we
22 have about -- now about 19. And when we would surface an
23 opportunity for a retirement sale, we would introduce Rick.
24 And if Rick was actively involved in the solicitation of that
25 account and the acquisition of that account, including

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1 obtaining broker records, going through due diligence, then he
2 would be paid a bonus for doing that.

3 THE COURT: Okay. So that would be more on the side
4 of -- that would be more akin to what he had done, as a general
5 matter, prior to 2014, when he made the transition?

6 THE WITNESS: Yes.

7 THE COURT: Okay. All right.

8 Sorry. Go ahead, Mr. Wickham.

9 BY MR. WICKHAM:

10 Q. Now, you were talking about what client executive sales
11 individuals do. Let's talk about that.

12 Does MMA have information concerning clients that the
13 company considers to be valuable?

14 A. Absolutely. We have the client list, we have a contact
15 list, we have information regarding structure of plans,
16 regarding client service needs. All those things are
17 information that we would consider to be confidential and trade
18 secrets.

19 Q. In terms of the order of things, how important is the
20 client information to the company and to its business?

21 A. It's absolutely critical. We deal in a highly competitive
22 environment. We have a number of high-quality competitors in
23 our area. If our competitors get our client list and
24 confidential information, they can target our clients and, you
25 know, that's a risk that we protect against.

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1 Q. Well, in terms of the value of this information, does the
2 company invest time and resources in developing client --
3 identifying clients and developing clients and maintaining
4 clients?

5 A. We certainly do. We have a sales -- sales group that is
6 paid on a commission basis to obtain the clients.
7 Additionally, we pay for any travel, entertainment, any
8 development of centers of influence. All the activities that
9 are required to acquire a new client, we reimburse our
10 employees for doing that.

11 Q. Okay.

12 And are individual employees encouraged to engage in
13 business development activities, like attending conferences and
14 meeting with clients and basically either attempting to
15 identify new prospective clients or maintain relationships with
16 old clients?

17 A. Yes, they are. And we budget about 2.5 percent of our
18 revenues every year just for that type of activity.

19 Q. Okay. So about 2.5 percent of the firm's revenues is
20 devoted to business development?

21 A. Mm-hmm.

22 Q. Okay.

23 THE COURT: You just have to -- I apologize. When you
24 say "mm-hmm," that's the way it comes across in the transcript.
25 So you just have to respond.

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1 THE WITNESS: Yes.

2 THE COURT: Thank you.

3 Q. Well, based on your answer, I'm assuming that this
4 information is confidential. But does the company consider its
5 client information confidential? Does it consider it
6 confidential?

7 A. Yes.

8 Q. Okay.

9 And is it something that the company takes reasonable
10 measures in order to protect the confidential nature of that
11 information?

12 A. We sure do. We password-protect everything we do. We have
13 corporate training called The Greater Good, where we talked
14 about how we treat clients' confidential information. We
15 remind people about the confidentiality of the information they
16 have routinely.

17 We have a duty not just to make sure our confidential
18 and trade secrets aren't used outside of us, but we have to
19 make sure that we protect that information from just, kind of,
20 hackers, the general environment. So we take it very
21 seriously.

22 Q. Is that why the company requires all employees to sign
23 confidentiality agreements?

24 A. That's -- yes, it is.

25 Q. Okay. And does the company require that access to all

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1 computers and computer systems all are password-protected?

2 A. Yes.

3 Q. And does the company have in place firewalls and other
4 types of barriers in order to be able to limit access and to
5 prohibit outside access to its confidential information and its
6 computer systems?

7 A. Yes.

8 Q. Okay.

9 THE COURT: Just before you go to the next -- let me
10 ask, with regard to the client list, is there a specific
11 document or database at Marsh that houses the client list and
12 client information; and if so, is there a name for it?

13 THE WITNESS: We have client lists and client
14 information in a number of different databases. We have it
15 in -- everybody readily has access to Outlook, so a lot of the
16 information is in Outlook.

17 THE COURT: When you say "in Outlook," I just want
18 to -- is it sort of a global Outlook? In other words, for all
19 the clients of Marsh would be, let's say, in the global
20 Outlook, but people could have their own, sort of, personal
21 Outlook address book?

22 THE WITNESS: Yeah, where global information resides
23 for Marsh's sales force. So our client lists are -- throughout
24 MMC are there. We also keep our contact information, personal
25 contact and client information, in our own Outlook databases.

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1 THE COURT: Okay. And is there -- do Marsh employees
2 have the ability to export what is on the -- I think you said
3 on the sales, the sort of the sales Outlook, into their own
4 personal Outlook, or they literally have to copy it?

5 THE WITNESS: You literally have to copy it at this
6 point.

7 THE COURT: Okay.

8 And did Mr. Ferguson have access to both?

9 THE WITNESS: He did.

10 THE COURT: And in connection with the -- you had
11 mentioned that it's password-protected. Do you have an
12 understanding of who actually can access the client list and
13 client information, let's say the person on the sales side,
14 the, sort of, global Outlook sales folks would have.

15 THE WITNESS: Yes.

16 THE COURT: And who at Marsh can access that? In
17 other words, if you're just an employee and you have your
18 credentials to access -- to access the Marsh system, do you
19 need another password in order to access these Outlook client
20 lists or client information?

21 THE WITNESS: Yes, there are separate passwords.

22 THE COURT: Okay. In connection with that -- so if an
23 employee in Mr. Ferguson's position, he would have a code to
24 access generally the Marsh systems, is that an accurate
25 statement?

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1 THE WITNESS: Yes.

2 THE COURT: And would that access give him also access
3 to his own Outlook address book?

4 THE WITNESS: I don't know.

5 THE COURT: Okay. But is it your understanding that
6 in order to access the other client list, in other words, I
7 guess the -- and again, if I'm mischaracterizing, you should
8 just let me know. The global client list, that there was a
9 separate password that was needed for that.

10 THE WITNESS: In sales force, where the global
11 information is for Marsh & McLennan, you can go in and search;
12 if you're looking for a client, you can go in and search by
13 client name, and it will come up and tell you whether or not
14 it's our client. But I don't know whether it has the ability
15 to print a whole client list of all Marsh clients.

16 THE COURT: Okay. All right.

17 And is that something that you have access to?

18 THE WITNESS: I do.

19 THE COURT: All right.

20 I'm sorry. Go ahead.

21 BY MR. WICKHAM:

22 Q. In addition, does client information show up in weekly,
23 monthly, and quarterly reports?

24 A. It does.

25 Q. Okay. So with Mr. Ferguson as part of the western region

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1 retirement services division, if he might be getting reports,
2 would some of those reports potentially have information about
3 not only the clients to which he was assigned, but also clients
4 to whom other people in the retirement services division were
5 assigned?

6 A. Yes.

7 Q. Okay. And for the reports that disclose financial
8 information -- I mean are there reports that disclose financial
9 information in terms of weekly, monthly, or annual revenues for
10 particular clients?

11 A. There are.

12 Q. And is that revenue information, is that considered
13 confidential?

14 A. It is.

15 Q. Okay. Why?

16 A. Well, the revenue information is confidential because it
17 speaks to the size of the client; it can also speak to the
18 profitability of the client. But it is definitely confidential
19 information.

20 Q. And it would also have the names of the clients themselves,
21 right?

22 A. Yes.

23 Q. Okay.

24 With regard to Outlook contact cards, either for an
25 individual or for the entire bay area, is the information in

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1 those individual contact cards, is that confidential?

2 A. It is.

3 Q. Okay.

4 Now, we have heard some information about the
5 allegation is is that all of this is publicly available, so
6 there is no confidential information.

7 Is that a true statement?

8 A. I know of no public database that you can go to and search
9 for the specific client list and contact information at each of
10 those clients. I know of no public database where you can do
11 that.

12 Q. Okay. And certainly Marsh does not publish its client list
13 anywhere, right?

14 A. We do not.

15 Q. Okay.

16 And even with regard to contact information --

17 THE COURT: Well, let me -- I understand you don't
18 publish the client -- are there any promotional materials or
19 other things that tout that Marsh represents X company, Y
20 company, Z company?

21 THE WITNESS: We use a sales presentation. We will
22 often be asked to give a client list of representative clients.
23 And when the third-party asks that, we do that.

24 THE COURT: Okay. Typically, is that something
25 that -- in connection with normally interacting with clients,

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1 that they agree to, or do you have to go back to those clients
2 and ask them separately, saying, you know, We'd like to
3 disclose this in limited format when we do use promotional
4 materials or brochures?

5 THE WITNESS: If we do anything beyond, kind of, a
6 logo page, where we're getting contact information or phone
7 numbers, we go to the client and it requests permission for
8 that.

9 THE COURT: Okay. And when you say -- so some of
10 those promotional materials will have -- might have contact
11 information at that particular -- in other words, for the
12 representative clients?

13 THE WITNESS: No, there would be no contact
14 information, just a logo.

15 THE COURT: Oh, so it would just be -- so if it's
16 beyond that, you'd go to the client.

17 THE WITNESS: Yes.

18 THE COURT: So what you typically would -- for lack of
19 a better term, would be outward facing, would be, you know, in
20 a presentation, the sales force in doing a presentation,
21 attached is a list of our representative clients. But am I
22 correct -- well, let me just ask, would that include the name
23 or identify the name of a contact person at that client?

24 THE WITNESS: The logo sheet would not.

25 THE COURT: Okay. And if -- when you say the logo --

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1 would there be anything else that would be part of that
2 presentation that would have it?

3 THE WITNESS: No.

4 THE COURT: Or that would have to be a specific
5 request by -- by whomever the sales force is trying to solicit
6 at the time?

7 THE WITNESS: So typically, the sales process is kind
8 of a long process. So if we had somebody in -- a life science
9 client or prospect wanted to be a client, we might show ten
10 life science logos of companies they would know on a sheet. If
11 they were still interested and wanted more information, we may
12 give them name and contact information, assuming the client
13 says it's okay for us to do that.

14 THE COURT: Okay. All right.

15 Sorry. Go ahead.

16 BY MR. WICKHAM:

17 Q. So far as you know, do you have any information that any of
18 the clients that Mr. Ferguson had interaction with ever
19 appeared on one of these logo sheets?

20 A. Not as far as I know.

21 Q. And --

22 THE COURT: I'm sorry. Go ahead. Ask the next
23 question.

24 MR. WICKHAM: Oh, no, you go ahead, your Honor.

25 THE COURT: No. I'd like to get information about

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1 those clients. In other words, I understand that initially
2 there were 20 or so. But what I'd like to get a sense of is
3 Mr. Ferguson's entire book of business; in other words, who, I
4 guess, Marsh would consider his clients, who among those were
5 clients that Mr. Ferguson solicited, in other words, sold
6 products that he was entitled to get a commission for.

7 In other words, in the arguable hybrid role,
8 understanding that -- well, in the hybrid role that he may have
9 had, and then among those, the total entity -- total universe
10 of those clients, how many of those folks are the clients that
11 Marsh believes that Mr. Ferguson has solicited.

12 MR. WICKHAM: We have that in exhibits coming up, your
13 Honor.

14 THE COURT: Okay. All right. Fantastic.

15 BY MR. WICKHAM:

16 Q. But just to be clear about these logo clients, I mean, are
17 we talking about mom-and-pops and midlevel and small companies,
18 or are we talking about, you know, really the largest clients,
19 public name brands and things of that nature within a
20 particular industry segment?

21 A. Usually we've used the name brand tag name.

22 Q. Okay.

23 Now, at some point in time, did it come to your
24 attention in either late December of 2018 or in January of
25 2019, that Mr. Ferguson may have taken client information,

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1 client confidential information, and sent that to his personal
2 email?

3 A. It did come to my attention through Diane Rosen, who's our
4 chief compliance officer, that that had happened.

5 Q. Okay.

6 Now, do you know -- and it's okay if you don't. Do
7 you know Ms. Rosen's subsequent interactions with Mr. Ferguson
8 concerning him sending client confidential contact information
9 to his personal email address?

10 A. I do. In late January, there had been a dialogue back and
11 forth, an email dialogue, I think it's in the exhibits
12 somewhere. In late January, Diane Rosen reminded Rick this is
13 confidential client information not to be sent to his personal
14 email address.

15 Q. Okay. And what was Ms. Rosen's position at that time?

16 A. Chief compliance officer for MMA.

17 Q. So the chief compliance officer for MMA was telling
18 Mr. Ferguson that he should not be disclosing and using client
19 information and sending it to his personal email address; is
20 that right?

21 A. That's correct.

22 MR. WICKHAM: Your Honor, Ms. Rosen is one of the
23 affidavits that we supplied.

24 THE COURT: Yes.

25 MR. WICKHAM: And she provides the background

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Calder - direct

1 concerning that particular instance.

2 THE COURT: Okay.

3 Q. But this is information, so as far as you knew, that
4 Mr. Ferguson was reminded of and admonished not to disclose and
5 use this information in January of 2019?

6 A. Yes.

7 Q. Okay.

8 THE COURT: I guess what I would -- and I apologize
9 for not -- I hadn't thought about it earlier. But obviously
10 with regard to the declarations of Ms. Rosen and Ms. Cam, I
11 will allow Mr. Ferguson to have an opportunity to respond in
12 whatever -- obviously they are not here as witnesses. But to
13 the extent that he has a response to their declarations or
14 affidavits, I would allow him to submit something after this
15 hearing.

16 MR. WICKHAM: Absolutely. And I anticipate that
17 Mr. Ferguson may comment on Ms. Rosen's statements, because he
18 did so during his deposition.

19 THE COURT: Okay.

20 MR. WICKHAM: Ms. Cam's declaration was primarily for
21 authenticating email messages. Since we've overcome that
22 hurdle, then you're welcome to it, but we had put that in the
23 completeness' sake so that we did have an authenticating
24 declaration.

25 THE COURT: Okay. Go ahead.

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Calder - direct

1 BY MR. WICKHAM:

2 Q. After this incident involving Mr. Ferguson sending client
3 contact information to his personal email address -- and let me
4 clarify that.

5 Did you know what were the circumstances of
6 Mr. Ferguson sending that information to his personal email
7 address?

8 A. I did not know at the time what the circumstances were.
9 However, I had read what the circumstances were.

10 THE COURT: When you say "read" --

11 THE WITNESS: Read some of the email from Diane back
12 and forth.

13 THE COURT: Okay. So the correspondence. Okay.

14 A. And the circumstances that I had become aware of is Rick
15 was sending publications, various information out to our
16 clients, that we all do. So making our clients aware of new
17 regulations or publications, so sending it to his whole client
18 list and then cc'ing his personal email address.

19 Q. Okay. So the thing that Ms. Rosen had flagged was him even
20 cc'ing this message that was being sent to clients. And by
21 virtue of cc'ing, then, of course, all the email addresses for
22 the clients are then going to his personal email address?

23 A. Correct.

24 Q. And it's that act that he was admonished that he should not
25 be doing?

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Calder - direct

1 A. Yes.

2 Q. Okay. And -- well, strike that.

3 Okay. Now, after that in January of 2019, did you
4 become aware of Mr. Ferguson engaged in communications with
5 clients that, from your standpoint, were not authorized?

6 A. No, not in January of 2019.

7 Q. No, no, after January.

8 A. Oh, after. I'm sorry.

9 Yes. In February, February 13th -- 14th of 2019, I
10 was --

11 Q. Hold on a second.

12 MR. WICKHAM: We're going to start to get into an area
13 with the disclosure of clients, your Honor, and talking about
14 it. So we might want to ask --

15 THE COURT: Okay. Mr. Temkin, if I could ask you to
16 step out briefly.

17 Are you going to talk about specific clients?

18 MR. WICKHAM: Yeah. It will probably last about 20
19 minutes or so.

20 THE COURT: Mr. Temkin, if I could ask -- if you could
21 step out for a moment.

22 MR. TEMKIN: Yes, your Honor.

23 If I may be heard. These are clients that are
24 currently clients of Triad or RIA; I would probably have access
25 to that anyway. I can certainly agree to keep these

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Calder - direct

1 proceedings confidential.

2 THE COURT: The problem is I don't know -- I have no
3 idea who they --

4 THE WITNESS: I know. They are not Triad or RIA
5 clients.

6 THE COURT: Okay. So Mr. Calder just said that he
7 does not believe that they are, in fact, dual clients, in other
8 words, clients of Triad and clients of Marsh.

9 MR. TEMKIN: Okay.

10 THE COURT: In other words, they are just Marsh
11 clients.

12 THE WITNESS: Correct.

13 THE COURT: Is that an accurate statement?

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 Ms. Williams, can we open the witness room so that
17 Mr. Temkin can sit back there? I think the benches out
18 there -- there are chairs like that, like here, in the witness
19 room. So you can sit there.

20 MR. TEMKIN: Thank you, your Honor. I appreciate
21 that.

22 THE COURT: Sure.

23 All right. Mr. Wickham, you may proceed.

24 MR. WICKHAM: Thank you.

25 Your Honor, I request one indulgence. I've got kind

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Calder - direct

1 of a bum hip.

2 THE COURT: No, you can -- I know that I was informed
3 that Mr. Temkin had an issue. And you should feel free, if you
4 want to be seated, to question from a seated position. The
5 only thing I ask is that you pull the microphone closer to you
6 or -- so however you want to -- you being most comfortable is
7 fine with me.

8 MR. WICKHAM: I do appreciate that, your Honor.

9 THE COURT: Sure.

10 MR. WICKHAM: I was only occasionally wincing.

11 THE COURT: I didn't notice.

12 BY MR. WICKHAM:

13 Q. So, Mr. Calder, we were about to ask how you first learned
14 that Mr. Ferguson was having contact or communications with
15 clients that did not seem appropriate.

16 A. I became aware on February 14th of 2019. I was attending a
17 lunch with a client, a lunch where we were discussing our
18 stewardship, our partnership. And I was inquiring how were we
19 doing. We handled their employee benefits; we also handled the
20 retirement services plan.

21 So as we were going through that, I asked specifically
22 how are things going with Rick and the retirement plan.

23 And they said, Oh, well, yeah, we got the letters and
24 we plan to sign them.

25 And I said, Excuse me, can you tell me what you're

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Calder - direct

1 talking about?

2 They said, Well, we got a solicitation letter from
3 Rick. We have some paperwork we need to do.

4 Excuse me. He didn't call it a solicitation letter.

5 We got a letter from Rick with some paperwork to do in
6 order to change -- in order to change our plan.

7 And I said, I don't know anything about that. What
8 are you talking about?

9 And so they were, at lunch, able to show me the email
10 that Rick had sent to them from his MMA computer soliciting
11 their business from MMA to Teros, who is a competitor of ours.

12 Q. Now, did that -- first of all, which client was this?

13 A. [REDACTED].

14 Q. And [REDACTED], did they transfer their business to Teros?

15 A. They did not.

16 Q. They stayed with MMA?

17 A. They did.

18 Q. Now, the paperwork -- well, strike that.

19 Did one of the client representatives at [REDACTED] send
20 you the email that Mr. Ferguson had sent to them?

21 A. They did.

22 Q. And what was the sum total -- what were the documents that
23 Mr. Ferguson had communicated to [REDACTED]?

24 A. I'm not quite sure, because there was a number of
25 communications; it went back and forth. But essentially the

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Calder - direct

1 document was, This change is no big deal; it's not -- it's just
2 a change in my back office. Here are a couple forms you need
3 to sign.

4 Q. Okay. Was one of the forms that he sent to them some sort
5 of a form that, had they signed it, whether they knew what it
6 was or not, it would have transferred their business from MMA
7 over to Teros?

8 A. Yes.

9 Q. When you were speaking with the representatives of [REDACTED],
10 did they indicate to you that they understood what Mr. Ferguson
11 was proposing?

12 A. They had no idea they were moving their business from MMA
13 to Teros.

14 Q. Okay. And did you later make that clear to them what
15 Mr. Ferguson was proposing?

16 A. Yes.

17 Q. And after you made it clear to them what Mr. Ferguson was
18 proposing, did they indicate whether they planned on staying
19 with MMA?

20 A. They did. They stayed with us.

21 Q. Okay. Were you surprised by this --

22 A. Not at all.

23 Q. -- by Mr. Ferguson's communication?

24 A. Oh, surprised by the communication. I was not surprised
25 that they stayed with us.

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Calder - direct

1 Q. Now, after you had this meeting with [REDACTED], did you then
2 contact Mr. Ferguson about this?

3 A. I did. I sent him an email --

4 Q. One quick second. On that date, February 14, 2019, was
5 Mr. Ferguson an MMA employee, so far as you knew?

6 A. Yes.

7 Q. And up until that point in time, had he remained
8 continuously employed with MMA?

9 A. Yes.

10 Q. Okay.

11 So after you learned of Mr. Ferguson attempting to
12 convince [REDACTED] to switch over to Teros while he's an MMA
13 employee, what did you do next?

14 A. I sent Mr. Ferguson an email. I said, Cease and desist. I
15 said, You need to stop soliciting our clients. Please call me
16 ASAP.

17 Q. If you turn to Tab 13, do you have that in front of you?

18 A. I do.

19 Q. Is that the email that you sent to Mr. Ferguson?

20 A. It is.

21 Q. And in which you told him to stop immediately soliciting
22 our clients?

23 A. I did.

24 Q. Did you also tell him in that message to call you as soon
25 as possible on your cell?

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Calder - direct

1 A. I did.

2 Q. And did Mr. Ferguson respond to this and call you?

3 A. He did.

4 Q. And was that on that same day?

5 A. It was on that same day. It was later that afternoon.

6 Q. And what do you recall of that conversation?

7 A. I recall telling Rick that he needed to stop soliciting our
8 clients. I told him that his access to our San Francisco
9 office had been deactivated; that his computer and phone had
10 been deactivated; and that he needed to make arrangements to
11 return to those.

12 Q. Did you tell him he was fired at that time?

13 A. I did not.

14 Q. Did you have the authority to fire him at that time?

15 A. I did not have the authority to fire Rick.

16 Q. Okay. So at least you've told him to cease and desist from
17 soliciting clients, but you did not fire him; is that right?

18 A. I did not. We have a very regimented process before we can
19 terminate an employee. And it requires that we get HR involved
20 and also -- and HR gets legal involved. So that is not my call
21 to make termination.

22 Q. But did you make arrangements to terminate his access to
23 the computer systems, his email, and things of that nature?

24 A. I did.

25 Q. Did you also direct him to make arrangements to return his

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Calder - direct

1 laptop and his iPhone to the company?

2 A. I did.

3 Q. Okay. And is that part of the information security that
4 the company maintains to --

5 A. It is.

6 Q. -- keep its information confidential?

7 A. It is.

8 Q. Okay.

9 THE COURT: Let me ask just one question surrounding
10 the email that you sent.

11 Prior to sending the email, had you spoken to
12 Mr. Peartree?

13 THE WITNESS: No, I had not.

14 THE COURT: Who had you spoken to prior to sending the
15 email, other than, was it, Ms. Rose? I'm sorry, what is it?

16 THE WITNESS: I spoke to -- or I didn't speak to Diane
17 Rosen, but became aware of her interaction with Rick, but only
18 by reading the testimony. I was not involved in that.

19 THE COURT: Reading the emails?

20 THE WITNESS: Right.

21 THE COURT: Okay.

22 And in connection with prior to this date, February
23 14th, 2019, was there a plan to terminate Mr. Ferguson's
24 employment?

25 THE WITNESS: There was not.

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Calder - direct

1 THE COURT: So as far as you know, on February 14th,
2 he was an employee in good standing with Marsh, and there were
3 no plans to terminate his employment?

4 THE WITNESS: He was an employee in good standing and
5 there were no plans to terminate him.

6 THE COURT: Was there a plan to shift his
7 responsibilities at the time, in February of 2019, or shortly
8 before that? Let's say in late 2018 to 2019, was there a plan
9 that Mr. Ferguson's responsibilities would be shifted?

10 THE WITNESS: His responsibilities would remain the
11 same, but he's still a client service executive with a bonus
12 for sales. So that had not changed.

13 What had changed is we were going to introduce Jeff
14 Stephens as a producer on the accounts, on the MMA accounts,
15 that Rick was the fiduciary on at that point in time. That
16 would require a discussion with the client and then agreeing to
17 the change.

18 THE COURT: Okay. When did that -- when did that
19 process start, as far as you know? In other words, when had
20 the decision been made to make that transition?

21 THE WITNESS: I believe that decision was made
22 sometime in December 2018.

23 THE COURT: Okay. And who made that decision?

24 THE WITNESS: Bill Peartree.

25 THE COURT: Okay. And were you part of that -- of the

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Calder - direct

1 discussion surrounding that?

2 THE WITNESS: I wasn't part of the discussion
3 surrounding changing advisers, but I was aware what was going
4 on.

5 THE COURT: Okay. What does that -- I guess I'm not
6 sure exactly what that -- in other words, you were aware that
7 Mr. Peartree was considering various options at the time he was
8 considering it, or you became aware of it as he was -- in other
9 words, what are you saying when you --

10 THE WITNESS: I became aware of what Bill's plans were
11 for the retirement department in San Francisco in December
12 2018.

13 THE COURT: Okay. And had those plans been in the
14 works prior to you becoming aware of it?

15 THE WITNESS: I think so.

16 THE COURT: Okay. And do you know how -- I just don't
17 know organizationally, would that have been his call? In other
18 words, in structuring the retirement department for San
19 Francisco, would that have been in his bailiwick? In other
20 words, he would do that himself?

21 THE WITNESS: Yes.

22 THE COURT: Okay. And he didn't need, sort of -- or
23 at least he didn't on this occasion, consult with you prior to,
24 sort of, implementing or starting that process?

25 THE WITNESS: Well, he -- he told me what the game

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Calder - direct

1 plan was before he started it.

2 THE COURT: Okay.

3 THE WITNESS: We tend to have -- we tend to do things
4 collaboratively. So I kind of knew the game plan before it was
5 actually implemented.

6 THE COURT: Okay.

7 And when did you first become aware of it?

8 THE WITNESS: I don't know for sure, but I believe in
9 December of 2018.

10 THE COURT: Okay. Was that done orally or did you
11 receive an email or was it some combination of the two?

12 THE WITNESS: I think it was oral. I don't recall
13 receiving any emails like that.

14 THE COURT: Okay. I guess what I would ask,
15 Mr. Wickham, if there are any emails about -- from Mr. Peartree
16 about this issue, I'd be interested in seeing those, to the
17 extent that I don't already have them. I may have -- they may
18 not -- I'm not saying they exist, I'm just saying to the extent
19 there are, I'd like to, sort of, see them.

20 MR. WICKHAM: Let me button this up, your Honor.

21 THE COURT: Sure.

22 MR. WICKHAM: Because I think it might become more
23 clear.

24 BY MR. WICKHAM:

25 Q. After Mr. Ferguson returned to the service position in

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Calder - direct

1 2015, were you generally aware that there was shorthandedness
2 on the client executive sales side in the bay area office?

3 A. Yes.

4 Q. Okay. And was that shorthandedness something that the
5 company institutionally was attempting to remedy for several
6 years?

7 A. Yes.

8 Q. Okay. And during that time, were various candidates being
9 sought and searched for in order to be able to bring in a new
10 salesperson, a new producer?

11 A. Over time we talked to people in the retirement services
12 production area, yes.

13 Q. Okay. And at some point in time, was Jeff Stephens
14 identified as a candidate to come into the bay area office to
15 fill that vacuum, if you will, on the sales side?

16 A. He was.

17 Q. Okay. And did Mr. Ferguson have involvement with
18 Mr. Stephens joining the firm?

19 A. He did.

20 Q. What was Mr. Ferguson's involvement?

21 A. So Jeff Stephens was identified as a prospective candidate
22 for us by Alan Ikeya. Alan is --

23 Q. Who was an MMA employee?

24 A. Alan is an MMA employee; he's an employee, health and
25 benefit producer. As part of his centers of influence, he was

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Calder - direct

1 doing business with an accounting firm that Jeff Stephens was
2 affiliated with in doing retirement planning for their clients.
3 So we became aware that he may be -- Alan let us know that he
4 may be interested in coming to work for MMA.

5 Once we got the process started of interviewing him,
6 Rick was instrumental in helping bringing him over as a new
7 producer.

8 Q. Was Mr. Ferguson negative about bringing Mr. Stephens in or
9 was he positive about bringing Mr. Stephens in?

10 A. He was positive about it.

11 Q. Because Mr. Stephens was going to fill the vacuum in the
12 bay area office because he was going to be coming in as a
13 producer?

14 A. Yes.

15 Q. Okay. Now, in bringing Mr. Stephens in, were there certain
16 issues concerning his compensation that the company had to meet
17 in order to be able to satisfy his compensation expectations
18 for him to join the firm?

19 A. Yes.

20 Q. And could you just -- without getting into any dollars,
21 could you generally describe what those issues were?

22 A. In general, we paid production talent 50 percent of the new
23 business they bring in in the first year, and 20 percent of the
24 recurring revenue for the life of the client on a commission
25 basis.

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Calder - direct

1 In order to meet the salary expectation that
2 Mr. Stephens had, we needed to code internally the house
3 accounts in the bay area to Mr. Stephens.

4 Q. Okay. Now, we've seen that from Mr. Ferguson's papers,
5 some description about him having clients stolen from him or
6 anything like that. Did MMA steal Mr. Ferguson's clients, so
7 far as you know?

8 A. No, the clients are MMA clients. My clients are clients of
9 MMA, they are not mine.

10 Q. No clients belong to an individual -- an individual, they
11 are all clients of the firm; is that right?

12 A. That's correct.

13 Q. Okay.

14 With regard to the clients to which Mr. Ferguson was
15 assigned, how did have interaction with Mr. Stephens coming in?

16 A. Could you state --

17 Q. You had mentioned that they were coded as house accounts.

18 A. Right.

19 Q. Is that accurate?

20 A. Yes.

21 Q. What did that mean as a practical matter?

22 A. That meant -- coding to a house account are accounts that
23 are not coded to a producer. Once they are coded to a
24 producer, that producer's compensation is paid based on the
25 coded revenue. We do not pay client service executives

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Calder - direct

1 compensation for sales. So commission is not coded to client
2 service executives. They are paid a salary plus a bonus.

3 Q. Okay. So just to make it really clear, was Mr. Ferguson
4 paid on a salary plus a bonus?

5 A. Yes.

6 Q. As a client executive service, was he paid on commissions?

7 A. The only time Rick would earn a commission would be if he
8 initiated a new account in the hybrid role. And in that role
9 he would receive compensation of 25 percent of the value of the
10 account.

11 Q. Okay. But for --

12 A. One time.

13 Q. For day-to-day clients, month-to-month clients, was he
14 getting paid a commission for those clients?

15 A. He was not.

16 Q. And the reason why he was not was because he was getting a
17 salary?

18 A. Correct.

19 Q. Okay.

20 And so those accounts to which he was assigned, were
21 they designated as house accounts?

22 A. Yes.

23 Q. Okay.

24 THE COURT: You mean prior to Mr. Stephens coming on
25 board?

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Calder - direct

1 MR. WICKHAM: Right, right.

2 THE COURT: They were house accounts prior to
3 Mr. Stephens coming on board?

4 THE WITNESS: Yes.

5 BY MR. WICKHAM:

6 Q. And that just simply meant that no one was designated as
7 getting a commission on them, because the person who was
8 providing the service was Mr. Ferguson, who wasn't earning a
9 commission, wasn't paid on a commission basis?

10 A. Correct.

11 Q. Okay. But there was no intent of somehow to prevent him
12 from having those clients at the point in time that you were
13 bringing Mr. Stephens in; is that right?

14 A. Right.

15 Q. Now, at some point in time, was there some discussion about
16 Mr. Stephens transferring over -- assuming a fiduciary capacity
17 or some sort of a fiduciary role there that Mr. Ferguson had
18 some issues with?

19 A. Yes.

20 Q. Could you describe what that was.

21 A. Rick said that some of the clients would not accept Jeff
22 Stephens as their adviser. And he was adamant that he talked
23 to them, they wouldn't accept it. And when we manage our
24 business, we manage our business to acquire and retain clients.
25 We make decisions all the time about what's the appropriate way

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Calder - direct

1 to service a client and manage a client.

2 I told Rick at that point in time that we understood
3 there's a business risk involved with changing advisers, but it
4 was a business risk we were willing to take.

5 Q. Okay. At that point in time, did you tell Mr. Ferguson
6 that if the clients didn't like it, that they would lump it and
7 they could leave the firm?

8 A. Absolutely not. If the clients didn't like it, we wanted
9 to present alternatives.

10 We have one specific client who had had Jeff Stephens
11 as an adviser before, and it was clear that wasn't going to
12 work. So we brought Bill Peartree up to meet with that client
13 to try to retain that client as an alternative.

14 Q. Okay.

15 THE COURT: So let me just -- I'm not sure I quite
16 understand what was happening here.

17 So Mr. Stephens is being brought over. In order to
18 meet his compensation, these things that -- so how was it
19 different? In other words, it had been a house account, but
20 now somehow it's going to be tied to Mr. Stephens. How is
21 that? In other words, what does that mean?

22 THE WITNESS: What that means is we agreed to a salary
23 for Mr. Stephens that was at the very top of what we could pay
24 him based on the book of business he brought with him. By
25 coding the house accounts to him, we were able to put a

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Calder - direct

1 production -- producer on that. He would get paid 20 percent
2 of the revenue annually on that against the salary we were
3 paying him. It was really a draw.

4 THE COURT: Okay. And when you say that -- so were
5 all of the house accounts transferred in the bay area similarly
6 to be coded to Mr. Stephens to make up that part of his salary?

7 THE WITNESS: I'm not sure if all the accounts were
8 coded and transferred over. I don't know the details of that.

9 THE COURT: Who would?

10 THE WITNESS: Bill Peartree would.

11 THE COURT: Okay.

12 Do you know -- although you don't know the details,
13 where there's certain individuals who either had the hybrid
14 role of Mr. Ferguson or who were -- had just a -- not a
15 commission role, did they retain those -- let me ask this
16 before I get to that question: So Mr. Stephens -- so these
17 accounts were not only being, sort of, transferred from --
18 well, would Mr. Ferguson have continued in the management and
19 handling of those clients once Mr. Stephens came on board and
20 the house accounts were transferred?

21 THE WITNESS: He certainly could have, as a client
22 service executive, handled the service on the accounts.

23 THE COURT: Well, were these clients -- what does
24 that -- I'm not sure I understand what that means. In other
25 words, were the clients -- what were the clients going to be

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Calder - direct

1 advised or were they not going to be advised at all, because
2 Mr. Ferguson was still going to maintain whatever interaction
3 he had with those clients going forward?

4 THE WITNESS: No. Mr. Ferguson was not going to
5 continue -- he told us he would not continue as a fiduciary on
6 those accounts. So then we would have to switch that role to
7 Jeff Stephens going forward.

8 THE COURT: Okay.

9 THE WITNESS: But he could still provide the
10 day-to-day client service for that.

11 THE COURT: Okay. So what was the impact or what was
12 the result -- in other words, was it literally just in order to
13 meet Mr. Stephens' compensation that these things were tagged,
14 sort of, under his name so that money would flow that way; but
15 whoever had those clients before could still maintain -- I just
16 don't understand exactly.

17 So Mr. Ferguson could have maintained the fiduciary
18 relationship with these clients, but what exactly was going to
19 happen? In other words, were the clients going to be told
20 that, Oh, by the way, Mr. Ferguson is no longer working -- what
21 would be the disclosure that would be made to the clients
22 relating to this -- to Mr. Stephens coming on board?

23 THE WITNESS: They would have to sign paperwork for
24 him to become the new fiduciary. We were working with Rick to
25 get him to talk with the clients about the new role Jeff was

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Calder - direct

1 taking there, so it was a collaborative effort. It turned out
2 not to be collaborative, but that was the game plan.

3 THE COURT: I guess my question is, so he didn't --
4 Mr. Ferguson -- or you're saying Mr. Ferguson didn't have to
5 give up the fiduciary relationship. In other words, he could
6 have maintained that, but Mr. Stephens just would have
7 continued -- just would have gotten the 20 percent
8 compensation?

9 THE WITNESS: Now you're kind of in an area where I'm
10 not sure of the answer to that. I don't know the roles about
11 the fiduciary and adviser in the 401(k) or retirement arena.

12 THE COURT: Okay. And in that space, is that more of
13 a -- in the sale of 401(k) and those, is that something that
14 someone has to be a registered -- in other words, someone who
15 is registered to sell securities?

16 THE WITNESS: You need to be licensed to sell
17 securities.

18 THE COURT: And, therefore, regulated by FINRA?

19 THE WITNESS: That's my understanding.

20 THE COURT: Okay.

21 So at the time that this transition was going to go
22 where Mr. Stephens was coming on board, the 20 percent that was
23 generated, was that money going to someone?

24 THE WITNESS: It was just going to MMA.

25 THE COURT: Okay. So it wasn't going to Mr. Ferguson.

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Calder - direct

1 THE WITNESS: It was not. There was no change in
2 Mr. Ferguson's compensation.

3 THE COURT: Okay.

4 THE WITNESS: In fact, it was increased.

5 THE COURT: Okay. Why was it increased? In other
6 words, was it just --

7 THE WITNESS: We talked with Rick about his
8 compensation. Rick had concerns about his compensation. We
9 upped his compensation and gave him the ability to still earn
10 the 25 percent on the new business that he initiated. But the
11 fact is that his house accounts, if they had been coded to
12 Rick, he wouldn't have made any more money. He wasn't in a
13 sales role, he was in a service role; so we don't pay him
14 commission on that.

15 THE COURT: Okay. Do you know -- I think in terms of
16 how -- was it Mr. Peartree who decided which of the house
17 accounts would be going to -- for lack of a better term, to
18 Mr. Stephens?

19 THE WITNESS: Yes.

20 THE COURT: And do you know how he -- what was -- were
21 you part of that decision-making process?

22 THE WITNESS: No, I really wasn't.

23 THE COURT: Do you know if any of the house accounts
24 that were transferred, whether they had -- the folks who had
25 serviced them before, whether they -- their compensation was --

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Calder - direct

1 in other words, whether they were getting the 20 percent?

2 THE WITNESS: No, nobody was getting the 20 percent.

3 THE COURT: So none of the -- as far as you know, none
4 of the house accounts that were transferred over, by the very
5 nature that they were house accounts, they wouldn't have been
6 getting any of that -- any of the 20 percent.

7 THE WITNESS: That's correct.

8 THE COURT: Okay. All right.

9 Sorry. Go ahead.

10 BY MR. WICKHAM:

11 Q. Thank you, Mr. Calder.

12 One quick question: Toward the end of 2018, did
13 Mr. Ferguson receive some sort of a warning or final warning?
14 A. Yes. Mara Crain and I met with Mr. Ferguson and addressed
15 some communications he was having with associates. It's not
16 the first time we've had this type of communication. It was
17 very confrontational. It was combative. It was demeaning.
18 And we put him on a final warning for it.

19 Q. Okay. And that was in late 2018?

20 A. Yes.

21 Q. But he wasn't fired because of that, right?

22 A. He was not.

23 Q. He remained an employee in I don't know good standing, but
24 regular standing?

25 A. Yes.

JA2VMARHredacted

Calder - direct

1 Q. Okay. Were there plans to fire him in February of 2019 --

2 A. There were not.

3 Q. -- before you had learned of any of these activities?

4 A. There were not.

5 Q. Okay. And ultimately, did Mr. Ferguson -- was his
6 employment involuntarily terminated or, so far as you know, did
7 he resign?

8 A. It was not involuntarily terminated. We received a letter
9 of resignation from Mr. Ferguson on February 15th.

10 Q. Now, after --

11 THE COURT: Was it going to be your recommendation
12 that his employment be terminated though?

13 THE WITNESS: It would have been.

14 THE COURT: In other words, because I understand that
15 you explain that there is a process that occurs. And then who
16 would have been involved -- I think you mentioned would
17 Mr. Peartree been involved in that?

18 THE WITNESS: Mr. Peartree would have been involved in
19 that.

20 THE COURT: HR?

21 THE WITNESS: Our chief human resources officer would
22 have been involved in that.

23 THE COURT: And legal?

24 THE WITNESS: MMA's legal counsel would have been
25 involved with that.

JA2VMARHredacted

Calder - direct

1 THE COURT: Okay. And in connection with the final
2 warning -- so there had been prior warnings, is that --

3 THE WITNESS: Through the years, Rick has had a
4 history of bombastic communications with employees. And there
5 had been written in various reviews, and we talked about it
6 quite a bit. So he knew.

7 THE COURT: Okay.

8 Because usually it's like everyone writes progression.

9 THE WITNESS: Right.

10 THE COURT: So when it's final, if there's another
11 incident, does that typically, in your experience, lead to
12 someone's employment being terminated?

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 All right. Go ahead.

16 BY MR. WICKHAM:

17 Q. Now, did you, either at the time or shortly thereafter,
18 investigate whether and to what extent Mr. Ferguson sent
19 similar communications to other MMA clients?

20 A. Yes. We -- I called together the producers in the office
21 who had referred accounts to Rick.

22 I said, Rick has been out soliciting our accounts.
23 Get a hold of your clients, talk to them, find out what's going
24 on.

25 And they did.

JA2VMARHredacted

Calder - direct

1 And it became clear to us that this was not an
2 isolated incident.

3 Q. Okay. If you could turn to Exhibit 9 --

4 THE COURT: Let me ask, it's almost 1 o'clock. I
5 don't know what -- how much more do you think you have?

6 MR. WICKHAM: A while.

7 THE COURT: Okay.

8 MR. WICKHAM: At least 20 minutes, maybe 30 minutes.

9 THE COURT: Okay.

10 With regard to the confidential part of your
11 examination, have you completed that or is that --

12 MR. WICKHAM: No, we're about to go into the core of
13 that.

14 THE COURT: Okay. Let me ask --

15 MR. WICKHAM: Or we're continuing to go through the
16 core of that.

17 THE COURT: I'd like to try and finish at least the
18 direct examination of Mr. Calder. But, I'm sorry, so you're
19 saying you have about 20 minutes or so?

20 MR. WICKHAM: Twenty or 30 minutes, your Honor. I've
21 got some things built in here to speed things up.

22 THE COURT: Okay. But why don't we -- let me go off
23 the record.

24 (Off record)

25 THE COURT: I don't mean to obviously cut you off, but

JA2VMARHredacted

Calder - direct

1 if we could aim for 1:30. If it turns out you still have some
2 additional questions, we can take our lunch break and come
3 back.

4 MR. WICKHAM: Okay. Thank you, your Honor.

5 BY MR. WICKHAM:

6 Q. Mr. Calder, would you please turn to Exhibit 9 and go
7 there?

8 A. Yes.

9 Q. So what Exhibit 9 is, is a compilation of 20 some-odd
10 separate email communications that were located within MMA's
11 computer system, Ms. Cam authenticates them, and through
12 Mr. Calder, I'll be able to introduce them.

13 Mr. Calder, would you please look at the first page of
14 Exhibit 9.

15 A. Yes.

16 Q. Okay. So could you tell me, is this one of the email
17 communications you found on Mr. Ferguson's MMA computer system?

18 A. Yes.

19 Q. And could you tell me how you interpreted this?

20 A. I interpret this as Rick using our confidential information
21 and email system to solicit our client over to his new
22 employer, Teros.

23 Q. Okay. This particular client was [REDACTED]; is that right?

24 A. The first one I have here --

25 Q. Oh, oh, I'm sorry, [REDACTED].

JA2VMARHredacted

Calder - direct

1 A. Yeah.

2 Q. And is the information concerning the client contact
3 information, [REDACTED], is that information that's
4 publicly -- that is publicly disclosed by MMA?

5 A. No.

6 Q. And typically, is that sort of client contact information
7 something that is easily obtained through public or readily
8 available means?

9 A. It is not.

10 Q. Okay. Now, tell me about this communication. Is this
11 similar to the communication he had sent to [REDACTED]?

12 A. Yes.

13 Q. Okay. So did you think that there was a problem with this
14 communication?

15 A. Well, first it came from our computer system while Rick is
16 an employee of ours. And in it he says: It's not really a big
17 deal, because I'll still work with MMA benefits insurance teams
18 to support our common clients. Nothing changes for your 401(k)
19 plan.

20 The fundamental change that is being proposed here is
21 the client will move their business from MMA to Rick at Teros.
22 So they would be taking our client.

23 Now, some unsophisticated people who may read this
24 might just sign the paperwork, because why wouldn't you? It
25 comes under MMA's signature, it comes under their email

JA2VMARHredacted

Calder - direct

1 address, and it's not a big deal.

2 So it is a big deal.

3 Q. At least their service adviser was telling them it's not a
4 big deal?

5 A. Correct.

6 Q. Right.

7 And is this similar to the message that had been sent
8 to [REDACTED]?

9 A. Yes.

10 Q. Okay. Why don't we turn to the next page on this exhibit.

11 And by the way, this is all occurring while he's an
12 employee at MMA, right?

13 A. Correct.

14 Q. Okay. Let's turn to the next one, which is slightly
15 different than the other one.

16 So how did you interpret this?

17 A. I interpreted this the same way I interpreted the first
18 email, with the exception that Rick makes commentary here that
19 he hasn't seen any of the new features or services provided by
20 MMA Securities come through, and they've announced further
21 resource cuts, which is not true.

22 Q. So did you interpret this as Mr. Ferguson making
23 misrepresentations concerning MMA Securities?

24 A. Yes.

25 Q. In the preceding paragraph, where it talks about the change

JA2VMARHredacted

Calder - direct

1 from SagePoint to MMA Securities, do you see that there?

2 A. I do.

3 Q. Now, was what Mr. Ferguson proposing, quitting MMA and
4 going to Teros, similar to or comparable to when MMA changed
5 its broker relationship from SagePoint to MMA Securities?

6 A. No, it's completely different.

7 Q. Okay. So was the statement about that this change was
8 similar to that, was that an accurate statement?

9 A. Absolutely not.

10 Q. Okay. And for this client, [REDACTED], do they remain with MMA,
11 if you know?

12 A. I don't recall if that name is on the list or not.

13 Q. Okay. All right. We'll.

14 Get to the list a little bit later on.

15 I don't want to begrudge all of this, but -- I mean go
16 through all of these, but would you look through the remainder
17 of these that are under Exhibit 9 and indicate whether you are
18 seeing comments about these containing, you know, misstatements
19 and these, sort of, downplaying the nature of this change, was
20 that consistent through all the solicitations that are
21 represented under Exhibit 9?

22 A. It is.

23 Q. Okay. Is it accurate that each of these were sent out from
24 Mr. Ferguson's computer at MMA using client contact information
25 that is confidential in order to facilitate these

JA2VMARHredacted

Calder - direct

1 solicitations?

2 A. Yes.

3 Q. Okay. And having seen these and received these, what was
4 your reaction to this?

5 A. I felt like somebody stole from me.

6 Q. Okay.

7 A. I felt personally offended by it. Some of these clients in
8 here are relationships of mine for 25 years plus. And it was
9 really an embarrassment.

10 Q. Well, we have heard things along the lines of you're
11 supposedly telling Mr. Ferguson to fire clients. For all of
12 the communications in here, did you tell Mr. Ferguson to fire
13 any of these clients?

14 A. Absolutely not.

15 Q. Now, there was one client that you were aware of that did
16 not -- was not comfortable with the change from Mr. Ferguson to
17 Mr. Stephens; is that right?

18 A. Yes.

19 Q. Is that a brewery, [REDACTED]?

20 A. [REDACTED], yes.

21 Q. That's an affidavit that Mr. Ferguson supplied?

22 A. Yes.

23 Q. With regard to that, when they indicated that they weren't
24 comfortable with moving to Mr. Stephens, did MMA, in fact,
25 offer them other alternatives in order to retain them as a

JA2VMARHredacted

Calder - direct

1 client?

2 A. We did. Bill Peartree came out and met with them. And
3 that was an alternative that we offered, that Bill would handle
4 the account. They elected to go with Mr. Ferguson.

5 Q. Okay. Did Mr. Ferguson identify and say to you that there
6 were any other clients that were not interested in moving from
7 Mr. Ferguson to Mr. Stephens with regard to this fiduciary
8 change?

9 A. Rick said in our meeting that there are clients who won't
10 make this change.

11 Q. Okay. But did he identify another --

12 A. He did not identify another client by name. We asked him
13 who they were so that we could reach out to them. He responded
14 by saying that was confidential information between him and the
15 client.

16 Q. And had he told you who these clients were, would you have
17 done what you did with [REDACTED] and attempt to introduce them
18 to other producers in order to be able to retain the client
19 instead of putting them at risk to leaving?

20 A. Of course. We work incredibly hard to acquire clients.
21 It's a competitive industry. Clients are our lifeblood. We
22 work hard to get them. We retain over 94 percent of our
23 clients in our office year over year, which is really, really
24 important. So not only do we work hard to acquire them, we
25 work very hard to keep them.

JA2VMARHredacted

Calder - direct

1 Q. And again, had Mr. Ferguson told you if there were any
2 other clients that weren't inclined to this change, would you
3 have done something -- would you have done everything possible
4 to try and retain those clients?

5 A. Absolutely.

6 Q. Okay.

7 THE COURT: You had mentioned a meeting where
8 Mr. Ferguson had indicated that there were other clients like
9 [REDACTED] that didn't want to make the transition to
10 Mr. Stephens. When was that? Was that a face-to-face meeting?

11 THE WITNESS: Yeah, face-to-face between Rick and I,
12 with Bill on the phone, Bill Peartree on the phone.

13 THE COURT: Okay.

14 Do you remember when approximately that was?

15 THE WITNESS: It's in here somewhere. I think it was
16 sometime in December of 2018.

17 THE COURT: Okay. Was that the same -- there's a
18 reference to a December 20th, 2018 meeting. Is that the same
19 meeting? That was a meeting where you attended, where
20 purportedly Mr. Peartree, Ms. Crain -- and Ms. Crain, or was
21 that a different meeting?

22 THE WITNESS: I believe that was the final warning
23 meeting.

24 THE COURT: Okay. So the meeting that you're
25 referring to, did that occur prior to?

JA2VMARHredacted

Calder - direct

1 THE WITNESS: It did, I believe.

2 THE COURT: Okay. And that was on the phone?

3 THE WITNESS: It was -- I was in person, Bill Peartree
4 was on the phone.

5 THE COURT: And was there an agenda or anything like
6 that prepared for that meeting?

7 THE WITNESS: I don't think there was a formal agenda.
8 We wanted to talk about the change in advisers.

9 THE COURT: Okay. Were there emails going around
10 setting up the meeting, saying that we want to prepare to
11 discuss --

12 THE WITNESS: I'm sure there were.

13 THE COURT: Okay.

14 Do you know whether those are emails that are in the
15 materials that I've received, Mr. Wickham?

16 MR. WICKHAM: Mr. Ferguson includes his summary of
17 that meeting which we vigorously dispute. But we haven't
18 proffered any emails surrounding that meeting. We're happy to
19 do so.

20 THE COURT: Okay. I actually was referring to the
21 meeting prior to the December 20th meeting. In other words,
22 the meeting that Mr. Peartree was on the phone and you were
23 with Mr. Ferguson.

24 THE WITNESS: The memo that you're referring to is
25 Rick's recollection of the meeting that he memorialized. I

JA2VMARHredacted

Calder - direct

1 don't know if that was December 20th or not.

2 MR. WICKHAM: It was the one from Mr. Ferguson. But
3 we can attempt to locate any messages on that subject, your
4 Honor.

5 THE COURT: I have questions about the December 20th
6 meeting also, but this is the meeting that Mr. Calder was
7 referring to where Mr. Ferguson had mentioned -- Mr. Calder
8 recalls Mr. Ferguson mentioning that there were other clients
9 similar to [REDACTED] who had issues. And I was wondering if
10 there are emails related to that -- that meeting.

11 MR. WICKHAM: We'll search that out, your Honor.

12 THE COURT: To the extent -- do you remember,
13 Mr. Calder, did you take notes during that meeting?

14 THE WITNESS: I did not.

15 THE COURT: Okay. Do you know one way or the other
16 whether Mr. Peartree took notes?

17 THE WITNESS: I don't know one way or the other.

18 THE COURT: Okay. All right.

19 I'm sorry. Go ahead.

20 BY MR. WICKHAM:

21 Q. Now, when you had discovered that Mr. Ferguson was
22 soliciting clients and actually soliciting a lot of clients,
23 and you sent him a cease and desist letter -- excuse me, a
24 cease and desist email, did you expect that he would stop?

25 A. Yeah, I did. I was sure he would.

JA2VMARHredacted

Calder - direct

1 Q. Okay. And did he stop?

2 A. No.

3 Q. Okay.

4 Why don't we turn to Exhibit 10. And this is kind of
5 a lengthy email string.

6 And if you go to the very last page, at the last page
7 it starts on February 19, so it's about five days after you
8 sent him the cease and desist email.

9 Was this an email string that you had received -- that
10 you ultimately received from [REDACTED]?

11 A. It is.

12 Q. And when [REDACTED] sent this to you, the entire email string,
13 why were they sharing this information with you?

14 A. They were sharing the information with me because they
15 realized that Rick was continuing to follow up with the same
16 activity that he exhibited that I learned about at lunch.

17 Q. Okay. That he was continuing to solicit [REDACTED], even
18 though they had -- they previously communicated they weren't
19 interested?

20 A. Yes. And I told him to cease and desist.

21 Q. Okay.

22 And if you go to the third page of this, where it says
23 up at the top, you know, I sent out updated meeting invite for
24 a go-to meeting. Do you see that there?

25 A. I do.

JA2VMARHredacted

Calder - direct

1 Q. Okay. So did you understand that to be that Mr. Ferguson
2 was trying to schedule a meeting with the folks at [REDACTED]?

3 A. I did.

4 Q. Okay.

5 And then the messages that follow, do they represent
6 [REDACTED] polite way of saying, We don't want to meet with you?

7 A. Yes.

8 Q. Okay. Now, if you go to the third page of this, which is
9 Mr. Ferguson's email from February 19, 11:07, do you see where
10 it says: Jeff left you a voicemail. Do you want to propose
11 some dates and times? Do you see that there?

12 A. Mm-hmm.

13 Q. Okay. Now, beneath that, could you read that paragraph and
14 tell me what that refers to.

15 A. Or did someone from MMA reach out with a changed attitude.

16 It's okay if it is, and I'm happy to answer any questions.

17 It's really odd, because I had an agreement with MMA on this
18 change since it's relatively minor. But apparently, once I
19 left MMA, someone changed their minds for some clients. But
20 for other clients, it's no problem at all. They're already
21 sending in signed paperwork today to facilitate the change.

22 I'm sorry I don't have an answer for what's happening at MMA.

23 Q. Did MMA have some sort of an agreement with Mr. Ferguson
24 allowing him to solicit and take away a lot of his client
25 business?

JA2VMARHredacted

Calder - direct

1 A. We did not.

2 Q. So this representation about an agreement that he had with
3 MMA, is this accurate or inaccurate?

4 A. It's completely inaccurate.

5 Q. Okay. And when he, once again, described this change as
6 being relatively minor, was this the proposed change, to move
7 from MMA to Teros, was that a minor change or is a major change
8 in terms of the scheme of things?

9 A. It's a major change. It's moving an MMA client, a line of
10 our business, from MMA to a direct competitor, Teros, in the
11 retirement services phase.

12 Q. And had you not been in [REDACTED] offices on the 14th when
13 they saw this communication with Mr. Ferguson, and had you not
14 been able to explain to them what it was, did you understand
15 that they would have signed this not knowing exactly what was
16 going on?

17 A. Absolutely.

18 Q. And do you believe that that is what happened to other
19 clients, that they didn't have the benefit of sitting with you
20 or another representative of MMA; they automatically signed
21 this paperwork that was being presented to them by a trusted
22 adviser, assuming that it was no big deal and administrative
23 change, and that they all -- not "they all," that some of them
24 transferred over based upon inaccurate information?

25 A. I think so.

JA2VMARHredacted

Calder - direct

1 Q. Okay.

2 THE COURT: Well, when you say you think so, what is
3 that based upon? Is that based upon the interaction you had
4 with [REDACTED]?

5 THE WITNESS: Not just [REDACTED]. I also made a phone
6 call that afternoon to [REDACTED]. And [REDACTED]
7 [REDACTED] at [REDACTED] is the VP of HR, said, Wow,
8 I'm glad you called. We're just in the process of getting
9 those papers signed.

10 THE COURT: Okay.

11 Are you aware of any clients who signed the papers
12 who -- in other words, has any client contacted you or someone
13 else from Marsh to say, We don't understand what's going on.
14 Why are you guys -- why isn't Marsh still our -- or why aren't
15 we still getting information from Marsh? Why are we getting
16 stuff, you know, elsewhere?

17 THE WITNESS: We have one client, [REDACTED], who
18 said, What's happening? Who's my representative at Marsh?
19 What's going on?

20 THE COURT: Okay.

21 And when in the time frame was that correspondence
22 received?

23 MR. WICKHAM: Your Honor, the [REDACTED] email is
24 under Tab 12.

25 THE COURT: Oh, okay. All right. So if you're going

JA2VMARHredacted

Calder - direct

1 to get to that, I apologize. I'm jumping the gun a little bit.

2 Go ahead.

3 BY MR. WICKHAM:

4 Q. Just one last point, Mr. Calder. Looking at the very first
5 page of Exhibit 10, where Mr. Ferguson is again communicating
6 with [REDACTED] and making statements about, you know, A client
7 has sent me the email MMA sent out; told me that they've been
8 saying -- what they've been saying about me and efforts to
9 force clients to use their new retirement adviser. He says, My
10 apologies. I find the whole situation unprofessional and won't
11 engage in mud-slinging and the like. I think people I worked
12 with MMA are the best in the business, etc.

13 This reference to unprofessional and mud-slinging, so
14 far as you know, was MMA, while attempting to preserve its
15 client relationships, somehow engaging in mud-slinging with
16 Mr. Ferguson?

17 A. Absolutely not.

18 Q. Okay.

19 Why don't we turn to the [REDACTED] email, which
20 is under Tab 12.

21 Did this at some point come to your attention?

22 A. It did.

23 Q. Okay. And just to speed things along, was the original
24 solicitation from Mr. Ferguson, is it on the first page of
25 this, and that's dated February 12th?

JA2VMARHredacted

Calder - direct

1 A. Yes.

2 Q. Okay. And this is being sent to them from his Teros
3 advisers email address; is that right?

4 A. Yes.

5 Q. Okay. And on February 12th, was he still an employee of
6 MMA?

7 A. He was.

8 Q. So he's using his Teros email address to solicit clients to
9 go to Teros while he's an MMA employee?

10 A. Yes.

11 Q. Okay.

12 And then did you subsequently receive the
13 communication from [REDACTED] general counsel asking
14 about the situation?

15 A. We did.

16 Q. And that's what's represented here in the top page of
17 Exhibit 12?

18 A. Yes.

19 Q. Okay.

20 And did [REDACTED] ultimately either move to
21 Teros or did they stay with MMA?

22 A. They did not. They decided they didn't want to get in the
23 middle of a fight.

24 Q. Okay. So MMA had a client that you had a contractual
25 relationship with or an expectation of a continuing business

JA2VMARHredacted

Calder - direct

1 relationship in the case of [REDACTED]; is that right?

2 A. Right.

3 Q. And that after Mr. Ferguson sent his email communications
4 trying to get them to move to Teros, then, because of
5 Mr. Ferguson's activities, so far as you know, did they then
6 decide to go and move away from MMA and they went somewhere
7 else?

8 A. They did.

9 Q. Okay. So there was an actual disruption in that
10 relationship?

11 A. There was.

12 THE COURT: So, I'm sorry, they went somewhere other
13 than Marsh and other than Teros?

14 THE WITNESS: I believe they went to Morgan Stanley.
15 I'm not positive, but I know they chose another adviser.

16 THE COURT: Okay. But not Teros.

17 THE WITNESS: But not Teros.

18 THE COURT: Okay.

19 MR. WICKHAM: This will be the last by way of
20 illustration, and there's a lot more, but if you turn to Tab
21 11.

22 THE COURT: We were just on 11.

23 MR. WICKHAM: No, no, we were just on 12.

24 THE COURT: Oh, I'm sorry. Okay. I'm sorry.

25 MR. WICKHAM: This is the one for [REDACTED].

JA2VMARHredacted

Calder - direct

1 THE COURT: Okay. Go ahead.

2 BY MR. WICKHAM:

3 Q. Could you turn to the second and third page of this Exhibit
4 11, Mr. Calder. Do you see that there?

5 A. Yes.

6 Q. So this appears to be a March 7 email from Mr. Ferguson to
7 [REDACTED] at [REDACTED], with copying two other
8 individuals -- three other individuals at [REDACTED].

9 Do you see all that there?

10 A. I do.

11 Q. Do you know whether, based on the title that Mr. Ferguson
12 put on this, Hello [REDACTED] 401(k) plan committee, do you know
13 whether or not these four individuals were their 401(k) plan
14 committee?

15 A. I don't know that.

16 Q. Okay. If this, in fact, was their 401(k) plan committee,
17 do you know whether or not that's publicly available
18 information?

19 A. It is not.

20 Q. Okay. And in this, as of March 7, so far as you -- when
21 you saw this, was Mr. Ferguson continuing to solicit MMA
22 clients?

23 A. Yes.

24 Q. Okay. And he had previously been told by you to cease and
25 desist on March -- excuse me, February 14, right? Okay.

JA2VMARHredacted

Calder - direct

1 A. And I believe he received a follow-up communication from
2 your firm at some point.

3 Q. Right. And I'll be introducing that in a bit.

4 Has Mr. Ferguson continued to solicit MMA clients
5 through the present date, so far as you know?

6 A. As far as I know, yes.

7 Q. Okay. When was the most recent?

8 A. We lost an account in July.

9 Q. Okay. What account was that?

10 A. That was [REDACTED].

11 Q. Okay. And that would have -- do you know when in July that
12 was?

13 A. I think the effective date of the broker change was July 1.

14 Q. Okay. So that would have been about a month or two months
15 after the entry of the temporary restraining order.

16 Would you turn to Tab 14, Mr. Calder.

17 Can you tell me what Tab 14 is?

18 A. This is a client list of ours of the clients that have left
19 us either to go with Rick to Teros Advisors, or to another
20 adviser.

21 Q. And do all these clients that are listed on this, do they
22 correspond with the solicitations that Mr. Ferguson sent?

23 A. I don't know if we have one on each of these clients in
24 your exhibits, but for the most part, yes.

25 Q. Okay. But I see at the bottom that [REDACTED] is the last

JA2VMARHredacted

Calder - direct

1 entry.

2 A. Yes.

3 Q. And [REDACTED], do you know whether or not he had solicited
4 them?

5 A. Yes.

6 Q. Okay.

7 MR. WICKHAM: We'll make a representation to the Court
8 that the two do match up.

9 THE COURT: When you're saying the two do match up, I
10 apologize, let me just take a look. So it matches up with the
11 clients who were --

12 MR. WICKHAM: Who were solicited, your Honor.

13 THE COURT: Being solicited. Okay. All right.

14 BY MR. WICKHAM:

15 Q. Now, Mr. Calder, did you come to understand or did you come
16 to discover that Mr. Ferguson was sharing other information,
17 client information, outside of MMA?

18 A. Yes, he was sharing the client list revenue, investment
19 fees paid.

20 Q. Okay. So I'll ask you to turn to Tab 25.

21 THE COURT: Just before you -- I just have some quick
22 questions on 14.

23 Just some of the columns, they refer to -- and I
24 apologize, Mr. Wickham. But under -- what does it mean
25 under -- it looks like it should be -- it's sort of cut off

JA2VMARHredacted

Calder - direct

1 from mine, but it looks like retirement advisory something, and
2 then there are dollar signs and figures that go down.

3 Do you have an understanding of what that column --

4 THE WITNESS: Those are the fees, annual revenue on
5 each of those accounts.

6 THE COURT: Okay. The money that would come into MMA.

7 THE WITNESS: MMA.

8 THE COURT: Any of these accounts, were any of these
9 accounts, did they generate fees that would go to Mr. Ferguson?

10 THE WITNESS: Not on an ongoing basis, no. He may
11 have received a sales bonus in the first year in that hybrid
12 role of his.

13 THE COURT: Okay.

14 THE WITNESS: But after that, no, no recurring
15 revenue.

16 THE COURT: So in connection with that hybrid role, it
17 was only if -- in that initial year that he got a bonus, that
18 compensation did not continue thereafter?

19 THE WITNESS: That's correct.

20 THE COURT: Okay. Now, in connection with the -- when
21 it says "employee health benefits," and then it says
22 "producer," and then there -- it looks like under the column
23 there are some names or something. What does that mean?

24 THE WITNESS: Those are the producers who referred
25 Rick into the accounts.

JA2VMARHredacted

Calder - direct

1 THE COURT: So those are the folks who -- are the
2 folks who are listed as producers, do they receive the 20
3 percent or no?

4 THE WITNESS: No.

5 THE COURT: So they referred it for Mr. Ferguson to
6 basically handle it from there on out.

7 THE WITNESS: They would get a one-time referral fee
8 for doing it.

9 THE COURT: Okay. All right.

10 And when it says "EHB Revenue," what's that refer to?

11 THE WITNESS: Employee health and benefit revenue.
12 That's just, sort of, if we knew how much revenue the client
13 was worth to us in general. It's informational.

14 THE COURT: I see. So if Marsh has other business
15 that they are doing with the client separate and apart from the
16 retirement advisory --

17 THE WITNESS: Right.

18 THE COURT: -- this gives you the total --

19 THE WITNESS: Yes.

20 THE COURT: -- of what that business would be. Okay.
21 And I see -- so there's a separate line item for
22 business insurance?

23 THE WITNESS: That's correct.

24 THE COURT: Okay. And then what does "CSE" stand for?

25 THE WITNESS: Client service executive. That means

JA2VMARHredacted

Calder - direct

1 who -- at some point there may have been kind of a referral
2 from -- for example, the [REDACTED] referral or retirement
3 advisory gate says Adam Moise and then Christiana Lu.
4 Christiana Lu is the client service executive on the employee
5 health and benefits piece.

6 THE COURT: Okay. And what does "CM" stand for?

7 THE WITNESS: Client manager.

8 THE COURT: Okay. And so -- I see. So the revenue
9 here on this, I guess it's sort of purple, is -- so that's
10 business insurance revenue and it indicates the revenue from
11 that.

12 THE WITNESS: Correct.

13 THE COURT: Okay.

14 And the notes are lost -- "RF" actually means Rick
15 Ferguson?

16 THE WITNESS: Correct.

17 THE COURT: And when you say loss, all of these -- is
18 it your understanding that all of these entities are now doing
19 business and they are at Teros?

20 THE WITNESS: Yeah. The retirement advisory business
21 has moved to Teros.

22 THE COURT: But the other business is still retained.

23 THE WITNESS: It is.

24 THE COURT: To the extent there is other business,
25 it's retained by Marsh?

JA2VMARHredacted

Calder - direct

1 THE WITNESS: It is. But when you lose one line of
2 business, clients become less sticky. So for us to lose a
3 piece of business, even though we've only lost a portion of the
4 revenue, it really can put the total revenue at risk.

5 THE COURT: Okay. All right.

6 Apologize. Go ahead. That was all I had on 14.

7 BY MR. WICKHAM:

8 Q. Let me ask you to turn to Tab 28, Mr. Calder.

9 Are you there?

10 A. I am.

11 Q. Okay. So in addition to discovering the solicitation
12 emails that Mr. Ferguson sent to himself, did you also
13 discover -- strike that.

14 In addition to the solicitation emails that
15 Mr. Ferguson had sent from his MMA computer to individual
16 clients, did you also discover that Mr. Ferguson had sent
17 substantial client information to his Teros email address?

18 A. Yes.

19 Q. Okay. And is Exhibit 28 an example of one of those emails
20 where he sent client information to himself?

21 A. It is.

22 Q. Okay. And this email, is this -- in sending this over, was
23 this attached to this email all of the client contact cards for
24 all of the client representatives that are identified where it
25 says "attachments"?

JA2VMARHredacted

Calder - direct

1 THE WITNESS: Yes.

2 Q. The reference there to BA main, do you know what the "BA"
3 stands for?

4 A. Bay area.

5 Q. Okay. So do you know whether this was just the clients
6 with whom Mr. Ferguson had a relationship or did this also
7 include other MMA clients in addition to the clients with whom
8 Mr. Ferguson had relationships?

9 A. It also included other clients.

10 Q. Okay. So he was -- he wasn't stopping with the clients
11 that he was working with, he was going with all the --
12 potentially with all the clients in the bay area, so far as you
13 understood it?

14 A. All the 401(k) or retirement --

15 Q. Right.

16 Now, the email contact cards that were attached to
17 this message, did it have the contact's name, email address,
18 telephone number, address, and things of that nature?

19 Yes?

20 A. Yes.

21 Q. Okay. And did some of them have other information, such as
22 a history of a course of communications?

23 A. Some of them did have Outlook attachments with that type of
24 information.

25 Q. And was all of this information confidential client

JA2VMARHredacted

Calder - direct

1 information that was useful for MMA's business?

2 A. Absolutely.

3 Q. Okay. I will be just drawing to your attention Exhibits

4 8 -- I'm sorry, 5, 6, and 7 and 8.

5 THE COURT: Just before you -- before you move on to
6 5, 6, 7, and 8, with regard to 28, just so that I understand
7 exactly what it represents, the first page is the email from
8 Mr. Ferguson to Mr. Ferguson at Teros. The attachments are the
9 V cards basically?

10 THE WITNESS: Yes.

11 THE COURT: And those V cards, although not attached,
12 the information, as you understand it, from those V cards has
13 been compiled in the spreadsheet that appears behind the email?

14 THE WITNESS: Yes.

15 THE COURT: Okay.

16 And do you have an understanding of the V cards that
17 are part of the attachments, whether all of those V cards came
18 from Mr. Ferguson's Outlook or whether some of them -- because
19 you had mentioned that some of them were not -- were from --
20 because it said "bay area main," which is, sort of, a
21 general -- as I understand it, more than just the clients that
22 may have been covered by Mr. Ferguson.

23 Was there a database or a particular location where
24 the bay area main clients would have been housed on Outlook for
25 MMA employees to access?

JA2VMARHredacted

Calder - direct

1 THE WITNESS: No, not necessarily. So I think these
2 are all of the retirement service clients who Rick either had a
3 relationship with before or had one now.

4 THE COURT: Okay.

5 THE WITNESS: Some of those he may not have an
6 existing relationship, but he downloaded the contact
7 information anyway.

8 THE COURT: Okay.

9 THE WITNESS: I can give you an example.

10 THE COURT: No, no, I think I understand.

11 In other words, some of them he may have -- five years
12 ago may have had a relationship with.

13 THE WITNESS: Yes. Right.

14 THE COURT: But he doesn't currently.

15 THE WITNESS: Right.

16 THE COURT: And others he had a current relationship
17 with -- in other words, ongoing. I mean at the time he was
18 sending this to himself, he had a relationship with them.

19 THE WITNESS: Yes.

20 THE COURT: Mr. Wickham, do you know, is there
21 somewhere where that is broken down in some way?

22 MR. WICKHAM: Which, of the ones that he had current
23 relationships with and previous relationships with?

24 THE COURT: Yes. I understand the argument with
25 regard to the confidential material. I'm just in my own mind

JA2VMARHredacted

Calder - direct

1 trying to think about -- again, one of the allegations, or at
2 least my understanding from the agreements, had a provision
3 about two years and entities that -- and soliciting entities
4 that -- it was in that two-year window that I think there was a
5 prohibition, but not prior to -- I get there are separate
6 things going on here.

7 I'm just in my own mind trying to see what buckets --
8 whether there's information in the materials that you provided
9 me that indicates which buckets these might fall into, putting
10 to the side for the moment that I understand the argument is
11 all confidential and he shouldn't have been sending it to
12 himself. I understand that that's the argument.

13 I'm just trying to figure out whether there's -- and
14 if not, I would ask if -- and this is something you can meet
15 and confer with Mr. Ferguson about, which ones did he have
16 relationships with within the past two years prior to this
17 date, on February 13 of 2019, and which had preceded it. And
18 again, I'm putting to the side for the moment the issue of the
19 contact information itself is something that MMA is basically
20 saying that's confidential information, shouldn't have been
21 sent to his Teros email.

22 MR. WICKHAM: We can get that information, your Honor.
23 It's basically if he had contact with them in the two previous
24 years, then they would be prohibited from the subject of
25 solicitation for 24 months after his separation.

JA2VMARHredacted

Calder - direct

1 We'll seek to get that information.

2 THE COURT: And again, I'm not in any way making a
3 ruling; I just want to make sure I have an understanding in my
4 own mind of the landscape --

5 MR. WICKHAM: Understood.

6 THE COURT: -- of what we're talking about.

7 MR. WICKHAM: Understood. We'll get that information.

8 We understood that basically the email was -- I don't
9 want to overstate it, but that it was -- it was the active
10 clients of the firm in the bay area. So it was all of them.
11 But we'll try to get that -- break that down.

12 BY MR. WICKHAM:

13 Q. Just quickly, Exhibits 5, 6, 7, and 8, do you have those in
14 front of you, Mr. Calder?

15 A. I do.

16 Q. So if you look at Exhibit 5, is that the same thing in
17 terms of more contact information, this one being called BA
18 Seven, so -- BA Second, so a second bay area grouping of
19 emails?

20 A. Yes.

21 Q. Okay.

22 And then Exhibit 6 -- excuse me, yeah, Exhibit 6,
23 prospects, this is more contact information that Mr. Ferguson
24 is sending to himself; is that right?

25 A. Yes.

JA2VMARHredacted

Calder - direct

1 Q. This being titled "prospects," I think in his deposition
2 Mr. Ferguson was less -- said that he was less precise about
3 that, but certainly he can share that on his examination.

4 And then Exhibit 7, it's entitled "RF client."

5 Do you see that there?

6 A. Yes.

7 Q. Okay. And again, is this more contact information that
8 Mr. Ferguson is sending to himself, to his email address at
9 Teros?

10 A. Yes.

11 Q. Do you know what Exhibit 8 is, where it says for profit?

12 A. I don't know why it was labeled that way, no, I don't.

13 Q. Okay.

14 A. But these are, again, either current clients or prospects
15 of MMA.

16 Q. Okay.

17 Now, would you turn to Tab 21 please.

18 A. Yes.

19 Q. Now, Tab 21 -- and actually, many of the documents in here,
20 are documents that were produced to us just this last week from
21 Mr. Ferguson.

22 If you look at Tab 21, as well as Tab 26, do you see
23 the spreadsheet on Tab 26?

24 A. Yes.

25 Q. If the spreadsheet that is associated with Tab 21, where it

JA2VMARHredacted

Calder - direct

1 says, Attached is a simple spreadsheet showing current clients
2 and my expected order of transfer contract, do you see that
3 there on Tab 21?

4 A. I do.

5 Q. Now, looking at Tab 26, this spreadsheet --

6 A. Yes.

7 Q. -- do you recognize the clients on this spreadsheet?

8 A. I do.

9 Q. Do you recognize these as MMA clients?

10 A. Yes.

11 Q. Do you recognize the revenue estimates as revenue estimates
12 of MMA clients?

13 A. Yes.

14 Q. Okay. Was Mr. Ferguson supposed to take this information
15 when he was working somewhere else?

16 A. Absolutely not. This is confidential information and trade
17 secrets.

18 Q. And the fact that he still has this and only produced it to
19 us last week, even though there's a restraining order saying
20 that he's not supposed to be, I think, in possession or using
21 this information -- I mean to me that's troubling -- but this
22 information in here, revenue information, is that confidential?

23 A. Absolutely. Yes.

24 Q. And it's useful for what purpose?

25 A. It's useful for our business planning and tracking; it's

JA2VMARHredacted

Calder - direct

1 useful for deploying resources for clients.

2 Q. And in terms of the list of clients that are listed in Tab
3 26, it looks to me that it's a larger group than the ones that
4 are of the clients that have left.

5 A. It is.

6 Q. So even though there has only been 15, 16 clients that have
7 left, if this represents some sort of a target list, is it your
8 surmising that he would be -- that there may be other clients
9 that he would be attempting to solicit?

10 A. I'm very concerned about that.

11 THE COURT: Mr. Wickham, it's a little past 1:30 right
12 now. I'm not, again, cutting you off; we can continue and
13 conclude Mr. Calder's examination after the lunch break, which
14 will be about an hour.

15 MR. WICKHAM: I just had one last item, your Honor, I
16 think. And I may not even need that.

17 THE COURT: Okay.

18 BY MR. WICKHAM:

19 Q. Here it is. Would you turn to Tab 15.

20 A. Okay.

21 Q. This is a redacted version of Mr. Ferguson's W-2s for 2015,
22 '16, '17, and '18. Do you see all those?

23 A. I do.

24 Q. And do you see the listed employer?

25 A. I do.

JA2VMARHredacted

Calder - direct

1 Q. Throughout that four-year period?

2 A. Yes.

3 Q. And his employer listed in that time period is who?

4 A. Marsh & McLennan Agency.

5 Q. And is that consistent with your knowledge, information, as
6 to who his employer was throughout that time period up through
7 the time of his resignation?

8 A. Yes.

9 MR. WICKHAM: Okay. We have nothing further at this
10 time, your Honor.

11 THE COURT: Okay. All right.

12 So when we come back from the lunch break, we'll come
13 back about -- why don't we say 2:40, Mr. Ferguson, you'll have
14 an opportunity to examine Mr. Calder, and then we'll proceed
15 with the rest of the hearing, okay?

16 Is there anything we should take up right now from
17 plaintiff's counsel?

18 MR. WICKHAM: I don't think so, your Honor.

19 THE COURT: Mr. Ferguson?

20 MR. FERGUSON: No. I'm sorry, your Honor, I missed --
21 what time are we coming back?

22 THE COURT: About 2:40.

23 MR. FERGUSON: 2:40.

24 THE COURT: Yes.

25 MR. FERGUSON: Thank you, your Honor.

JA2VMARHredacted

Calder - direct

1 THE COURT: Just so the parties know, there is a
2 cafeteria in the lower lobby. And if you go, you make a right
3 out of this door, another right, and then a right to the
4 elevators over here, you go to the lower lobby, and there's a
5 cafeteria over there. Or you can go out obviously.

6 MR. WICKHAM: Will the courtroom remain open during
7 the lunch hour?

8 THE COURT: Ms. Williams?

9 We usually -- we're going to open the back room?
10 We're going to lock the courtroom, but we'll leave the witness
11 rooms open during the back where Mr. Temkin is in one of them
12 right now.

13 MR. WICKHAM: Okay.

14 THE COURT: And we'll advise Mr. --

15 THE DEPUTY CLERK: We'll let him know.

16 THE COURT: Yes, that we're going to come back after
17 lunch. And then he can come back in after lunch.

18 MR. WICKHAM: Thank you, your Honor.

19 THE COURT: All right? Okay. Thank you very much.

20 So I guess that's by way of saying if there's anything
21 you want to look at during the lunch break, you should take it
22 with you now and put it in the witness room.

23 MR. WICKHAM: Thank you, your Honor.

24 THE COURT: Okay? All right. Thank you very much.

25 You may step down.

JA2VMARHredacted

Calder - direct

1 (Witness steps down)

2 THE COURT: See everybody around 2:40.

3 MR. WICKHAM: Thank you, your Honor.

4 (Luncheon recess)

5 A F T E R N O O N S E S S I O N

6 2:45 P.M.

7 THE COURT: Mr. Ferguson, are you ready to proceed?

8 MR. FERGUSON: Yes, your Honor. Should I stand or --

9 THE COURT: You can either stand or you can remain
10 seated. Again, you just need to pull the microphone close to
11 you. And I don't know whether -- oh, sorry, Mr. Calder, could
12 you step up please?

13 And Mr. Calder, you're still under oath.

14 Sorry about that.

15 MR. FERGUSON: Your Honor, permission to approach the
16 witness.

17 THE COURT: Sure. Absolutely.

18 Mr. Ferguson, you can either examine seated or
19 standing from the table; or, if you want, you can also use the
20 podium, if you want.

21 MR. FERGUSON: Thank you, your Honor.

22 THE COURT: It's up to you.

23 MR. FERGUSON: As big as my binder is, I guess I'll
24 sit here.

25 THE COURT: All right. That's fine.

JA2VMARHredacted

Calder - cross

1 You may proceed. You may ask questions.

2 JEFFREY CALDER, resumed.

3 CROSS-EXAMINATION

4 BY MR. FERGUSON:

5 Q. Hi, Jeff. Can you hear me okay?

6 A. Yes.

7 Q. Jeff, you stated earlier that you're my supervisor;
8 correct? And you were my supervisor the whole time?

9 A. Yes.

10 Q. Could you please turn in that binder to Item 2, and go to
11 the last page. Do you see there --

12 MR. WICKHAM: Sorry, we don't have Exhibit 2 from
13 Mr. Ferguson's binder. It's weird. It's 1 and 3, and 4, 5, 6,
14 7, 8, but no 2.

15 THE COURT: Okay. I have a copy here.

16 I don't know, Mr. Ferguson, do you have an extra copy
17 or no? Do you have an extra copy?

18 MR. FERGUSON: I do not. It is a client agreement.

19 THE COURT: Yes. No, my law clerk is handing a copy
20 to Mr. Wickham right now.

21 MR. FERGUSON: My apologies, Mr. Wickham.

22 BY MR. FERGUSON:

23 Q. So, Jeff, on that last page, and after the agreement on the
24 required disclosures that are required to accompany that, under
25 "Supervision," who does it state my supervisor is?

JA2VMARHredacted

Calder - cross

1 A. Kevin Bowler.

2 Q. Why would MMA Securities say I have a different supervisor
3 than what you testified to?

4 A. This says that the supervisory principal for Elmer Richard
5 Ferguson is Kevin Bowler. And that would be as it relates to
6 your FINRA activities under MMAS.

7 Q. So there's separation?

8 A. Yes.

9 Q. Activities of MMA and activities of MMAS are separate?

10 A. I'm not sure they are. MMAS is MMA Securities; MMA, Marsh
11 & McLennan Agency. I had supervisory responsibility for you as
12 an employee of MMA.

13 Q. Mr. Calder, to be very specific here, Jeff, are you stating
14 on the record -- you've already mentioned you're
15 unregistered -- that you were supervising registered persons
16 for a registered business?

17 A. No.

18 Q. I must have misunderstood you.

19 Jeff, earlier you said all of the clients that I had
20 were house accounts, as far as the commission payments;
21 correct?

22 A. No. The accounts were coded to house.

23 Q. Okay. They were coded to house. You said they'd always
24 been like that?

25 A. No, I don't think they have always been like that. That

JA2VMARHredacted

Calder - cross

1 changed.

2 Q. Okay. I wanted to make sure we corrected that, that
3 actually they were under my name at SagePoint; correct?

4 A. I don't know.

5 Q. Wasn't it only after they moved from SagePoint to MMA
6 Securities, MMA Securities coded them as house accounts, and
7 that was July 1st, on or about, 2018?

8 A. I don't know.

9 Q. You were my supervisor?

10 A. Yup. For MMA.

11 Q. On all my clients --

12 THE COURT: Let me ask, Mr. Calder, is it your
13 understanding that at a certain point in time that the accounts
14 were not house accounts?

15 THE WITNESS: My understanding is that at a certain
16 point in time they weren't. When Rick was a producer, they
17 should have been coded to Rick as a producer.

18 THE COURT: And does that mean at that time as a
19 producer he would have been getting some percentage, whether it
20 was 20 percent or something like that?

21 THE WITNESS: Yes.

22 THE COURT: And do you know whether or not that
23 continued? Am I correct that SagePoint to MMA Securities, when
24 did that occur?

25 THE WITNESS: I don't know the exact date of that.

JA2VMARHredacted

Calder - cross

1 THE COURT: Okay.

2 MR. FERGUSON: Your Honor --

3 THE COURT: When you say "exact date," is within 2018?

4 THE WITNESS: Yes.

5 THE COURT: Was it in connection with the shift of the
6 business -- so was that around December of 2018 or some time
7 before that?

8 THE WITNESS: I think it would have been some time
9 before that.

10 THE COURT: Okay.

11 And do you know with regard to the shift -- and I
12 think I may have asked this already, but do you know with
13 regard to the shift from SagePoint to MMA Securities, were any
14 other -- would the book of business for any other individuals
15 shifted from -- shifted over to house accounts?

16 THE WITNESS: I don't have knowledge of that.

17 THE COURT: And who would have knowledge of that?

18 THE WITNESS: I would think Bill Peartree would.

19 THE COURT: All right.

20 I'm sorry. Go ahead, Mr. Ferguson.

21 BY MR. FERGUSON:

22 Q. Moving on. So, Jeff, earlier you testified that -- we saw
23 a spreadsheet that had compensation information from clients.
24 And you specifically stated that's confidential; it's not
25 public. There's no way to find that, unless someone was to get

JA2VMARHredacted

Calder - cross

1 into records; correct?

2 A. Yes.

3 Q. Can you go to Tab 49. It should be labeled "[REDACTED]

4 [REDACTED] 401(k) Plan."

5 If we go to -- skip the first page, skip the blank
6 page. You see we get to a 5500?

7 A. Yup.

8 Q. If you go to the third page of that 5500, midway through,
9 do you see halfway down the page where it says SagePoint
10 Financial?

11 A. Yes.

12 Q. Isn't that the broker-dealer on this plan? Isn't that the
13 who we worked for at that time?

14 A. I believe it was.

15 Q. And do you see the number listed down, it says 10,915?

16 A. I do.

17 Q. That's the commissions paid; correct?

18 A. That's what it says.

19 Q. So commission information, this is a 5500, it's publicly
20 available.

21 A. Yes, it is. I don't know that that's the revenue that
22 flowed to MMA though.

23 Q. MMA could change it all they wanted, correct, the money
24 amount they get?

25 A. MMA wouldn't change it. How would they change it?

JA2VMARHredacted

Calder - cross

1 Q. Let's trace that money flow.

2 Is the commissions paid directly to MMA?

3 A. Commissions are paid to SagePoint. SagePoint, in turn,
4 paid MMA, I believe.

5 Q. Why is that intermediary in there?

6 A. Because the registration was with SagePoint. So I believe
7 that they had to collect the money and disburse it to us.

8 Q. So when the clients moved to MMA Securities, then the money
9 was paid directly to MMA; correct?

10 A. I don't know.

11 Q. So this is securities money, securities contracts, and it
12 was paid to MMA Securities or to MMA?

13 A. I don't know.

14 THE COURT: When you say you don't know, is it your
15 understanding that because of the separation, the legal
16 separation that is required in connection with an entity like
17 MMA Securities and then an entity like MMA, is it your
18 understanding that with regard to the payments that were made
19 to SagePoint, that that was done because there was a legal
20 requirement to do that?

21 THE WITNESS: I believe so.

22 THE COURT: And do you believe that that legal
23 requirement would have changed after the time period that -- of
24 the transition from SagePoint to MMS?

25 THE WITNESS: I don't know, because MMA Securities is

JA2VMARHredacted

Calder - cross

1 part of MMA. So I don't know if that makes any difference.

2 THE COURT: And by "part," you mean it's a subsidiary
3 of it? I don't want to put words in your mouth. What do you
4 mean by "part of"?

5 THE WITNESS: Well, it's Marsh & McLennan Agency's
6 security. So it's our broker-dealer.

7 THE COURT: Okay. So you just don't know whether or
8 not -- because it's your -- it's MMA's broker-dealer --

9 THE WITNESS: Right.

10 THE COURT: -- whether it would still -- the payment
11 structure would still be the same.

12 But wasn't SagePoint the broker-dealer for MMA?

13 THE WITNESS: Yup, they were, yes.

14 Oh, for the Barney & Barney portion of MMA anyway.

15 THE COURT: Okay.

16 I'm sorry. Go ahead, Mr. Ferguson.

17 BY MR. FERGUSON:

18 Q. Jeff, to what you just said there, to the Barney & Barney
19 part of MMA, SagePoint was the broker-dealer, does that mean
20 that Barney & Barney and/or MMA own SagePoint?

21 A. No.

22 Q. Completely separate entity?

23 A. Yes.

24 Q. So up until, let's say, midway -- obviously I know the date
25 these were transferring, was around July 1st, 2018. Until that

JA2VMARHredacted

Calder - cross

1 point, when all the clients transferred somewhere around that
2 time, the broker-dealer was completely separate, unaffiliated,
3 and all these clients had contracts with a completely separate
4 company from MMA?

5 A. I don't have knowledge exactly of how they were contracted.

6 Q. But you were my supervisor?

7 A. I was your supervisor, yes.

8 Q. Jeff, earlier, you stated that -- in the declaration you
9 said that I didn't bring any clients to MMA, MMAS; correct?

10 A. That's correct.

11 Subsequently, Rick, we found out that you did bring
12 one.

13 Q. Subsequent to when?

14 A. To when the declaration was made.

15 Q. Oh. So we'll just take that statement back.

16 THE COURT: Mr. Ferguson, just questions, not --
17 commentary isn't necessary. But at a time when -- if there's
18 going to be argument at some point, that's fine for you to
19 make, commentary. Just questions and answers here.

20 MR. FERGUSON: I see, your Honor.

21 THE COURT: Thank you.

22 BY MR. FERGUSON:

23 Q. Jeff, can you please turn to Tab 12. Should be an email
24 chain; has Bill Peartree right at the top.

25 A. Yes.

JA2VMARHredacted

Calder - cross

1 Q. Do you see, this is Bill Peartree, and then down below is
2 myself. This is an email exchange between Bill and I.

3 A. Yup.

4 Q. Do you see the date there? It's February 9th, 2017 -- or
5 2007?

6 A. Yes.

7 Q. Do you see what we're discussing there? If you want to
8 take a moment just to peruse through.

9 A. I do.

10 Q. In there, the second paragraph at the bottom: In the
11 meantime, I'm busy sending out notices to all my contacts,
12 clients moving to Barney & Barney.

13 And then up at the top, Bill responds: I'm glad you
14 accepted. Looking forward to having you join. I was thinking
15 perhaps that we should get together and discuss some of these
16 things before the 26th.

17 Do you know why Bill and I would be discussing clients
18 and prospects of another company before I moved to Barney &
19 Barney?

20 A. I don't.

21 Q. Is it true that I brought [REDACTED] defined
22 benefit plan to, at that time, SagePoint/Barney & Barney?

23 A. I think it is. And I think that's the account that was
24 identified once some more review was done.

25 Q. Did I bring [REDACTED] accounts over?

JA2VMARHredacted

Calder - cross

1 A. I don't know.

2 Q. Within the last couple of years, did I bring [REDACTED] to
3 MMA?

4 A. I don't know the origin of [REDACTED].

5 Q. Did I label in any MMA systems that the president was my
6 college buddy?

7 A. I have no idea, Rick.

8 Q. Can you turn to Exhibit 11 please.

9 This is the Taleo -- I hope I'm saying that word
10 correct -- evaluation, you did of me; correct?

11 A. Yes.

12 Q. If we go to second-to-the-last page, at the bottom,
13 "Overall Comments." Do you see where it says: Rick has done a
14 great job. I'm going to skip down. He also has had a
15 successful year closing referred accounts and developing some
16 on his own as well.

17 A. Yes.

18 Q. So through the years -- I mean when I started and through
19 the years, I brought clients to MMA, Barney & Barney,
20 SagePoint, MMA Securities on my own?

21 A. You did.

22 (Pause)

23 MR. FERGUSON: I apologize for the delay. I'm trying
24 to skip through questions to make this faster.

25 THE COURT: Sure.

JA2VMARHredacted

Calder - cross

1 Q. Jeff, you stated earlier in the declaration that Barney &
2 Barney merged into MMA on February 1st, 2014; is that correct?

3 A. We didn't merge, we were acquired.

4 Q. Acquired. So MMA bought all the shares of Barney & Barney?

5 A. Correct.

6 Q. When did the merge happen?

7 A. What merge?

8 Q. When was Barney & Barney merged into MMA?

9 A. MMA acquired Barney & Barney in 2014.

10 Q. Was Barney & Barney ever merged into MMA or is it still an
11 existing entity?

12 A. Barney & Barney is a wholly owned piece of MMA. We are not
13 merged.

14 Q. Oh. My apologies. The Department of Corporations says
15 that it was merged on December 31st, 2014.

16 THE COURT: Is there a document that you're referring
17 to, Mr. Ferguson?

18 MR. FERGUSON: Actually, as soon as I said that, I
19 think that I forgot to put it in, your Honor. So I have to
20 take that back.

21 THE COURT: Okay. Well, I mean what is the document
22 that you'd be referring to?

23 MR. FERGUSON: Public website, Department of
24 Corporations. When I looked up Barney & Barney, they showed as
25 merged into MMA, December 31st, 2014.

JA2VMARHredacted

Calder - cross

1 THE COURT: Okay. And it was Department of
2 Corporations of?

3 MR. FERGUSON: California.

4 THE COURT: California. Okay.

5 All right. Go ahead.

6 BY MR. FERGUSON:

7 Q. Jeff, you also stated in your declaration on -- dated April
8 27th -- and you've stated several times here today -- all of
9 these clients, everything -- all clients I have, all clients
10 we're talking about today, were specifically clients of MMA;
11 correct?

12 A. Can you restate that, Rick?

13 Q. You stated -- I think it's here. Hold on.

14 In your April declaration, and as you've been talking
15 with the counsellor today, many, many times you've stated very
16 specifically, and in your declaration you were very specific
17 that all of these clients are clients specifically of MMA; is
18 that correct?

19 A. Yes.

20 Q. Is [REDACTED] a client of MMA?

21 A. Yes.

22 Q. What lines of business do they have?

23 A. Retirement services.

24 Q. So going back to what you said earlier, the retirement
25 services plan is directly with MMA?

JA2VMARHredacted

Calder - cross

1 A. To my knowledge.

2 Q. Can you please go to tab 2 again.

3 Do you recognize this as the client agreement between
4 MMA Securities and the client?

5 A. I have never seen this document before.

6 Q. Do you see at the top where it says "MMA Securities LLC"?

7 A. I do.

8 Q. In the very first line it says: This advisory services
9 agreement, dated July 1st, 2018, is by and between -- and the
10 client did send this to me -- [REDACTED] and MMA
11 Securities, a federally registered broker-dealer and an
12 investment adviser.

13 A. Yes.

14 Q. I'll give you a moment. Can you go through this document
15 and show me where retirement plan services were direct with
16 MMA. Is MMA a party to this agreement anywhere?

17 A. I don't see that.

18 Q. Isn't this the contract that all retirement services
19 clients would have signed?

20 A. I'm not aware of that.

21 Q. Jeff, you were my supervisor?

22 A. Yes.

23 Q. If we go to the --

24 THE COURT: Although you're not aware of every client,
25 have you ever seen a retirement services client contract

JA2VMARHredacted

Calder - cross

1 between a client and MMA?

2 THE WITNESS: No, I have not. Those are handled
3 through our compliance department in San Diego.

4 THE COURT: Okay.

5 Is it your understanding that for the type of services
6 that, let's say, you know, that [REDACTED] was receiving, that
7 in order to obtain those types of services, they would have to
8 have signed an agreement with MMA Securities?

9 THE WITNESS: It appears that way, yes.

10 THE COURT: Okay. All right.

11 Go ahead, Mr. Ferguson.

12 BY MR. FERGUSON:

13 Q. Jeff, what lines of business -- and I apologize, because I
14 think you said this earlier. What lines of business does MMA
15 do or are they authorized to do?

16 A. We are a retail insurance brokerage. We do business
17 insurance, employee health and benefits.

18 Q. Are they authorized to do retirement plans?

19 A. MMA does retirement services, yes.

20 Q. Really? I'm a little confused, because you say they do
21 retirement services, but there's -- you've just stated that
22 you've never seen a contract between a retirement services
23 client and MMA.

24 A. So my depth of understanding of the relationship between
25 MMA Securities and MMA is not very broad. I don't fully

JA2VMARHredacted

Calder - cross

1 understand the relationship. But I do know that we pay our
2 producers and production staff a bonus and salary to bring in
3 new business. Therefore, when we're paying somebody to
4 maintain that business through MMA, I consider them not a
5 client.

6 Q. Okay. I do understand that you consider them -- how long
7 have you been a principal at MMA and, before that, Barney &
8 Barney?

9 A. I was a principal in 2008.

10 Q. Quite some time, right?

11 A. Yes.

12 Q. You're the managing director --

13 A. Correct.

14 Q. -- of that area?

15 A. Mm-hmm.

16 Q. So you're very influential in the company.

17 THE COURT: What does it mean to be a director? In
18 other words, how many employees are your direct reports?

19 THE WITNESS: I don't have a lot of direct reports.
20 I'm directly responsible for the 110 employees we have in the
21 bay area.

22 THE COURT: So in the region.

23 THE WITNESS: Yes.

24 THE COURT: And does that include responsibility for
25 budgeting and other things with regard to those folks in the

JA2VMARHredacted

Calder - cross

1 bay area?

2 THE WITNESS: Yeah. I'm responsible for the profit
3 and loss in the bay area.

4 THE COURT: Okay.

5 And in connection with an employee that is a
6 registered broker, in addition to signing an agreement with
7 MMA, are you aware of whether or not an employee also has to
8 sign -- whether it's termed an employment agreement or
9 something else, but has to sign something with MMA Securities?

10 THE WITNESS: I'm not aware of that.

11 THE COURT: Okay.

12 Go ahead, Mr. Ferguson.

13 MR. FERGUSON: Thank you, your Honor.

14 BY MR. FERGUSON:

15 Q. Jeff, during the time you've known me, did I do anything
16 except retirement plans?

17 A. No.

18 Q. So all my clients, 100 percent investment securities
19 clients?

20 A. I think so.

21 Q. And because of that, none of them had direct contracts with
22 MMA for my services?

23 A. I don't know that.

24 Q. So it's still your understanding that MMA might have direct
25 contracts for securities clients?

JA2VMARHredacted

Calder - cross

1 A. I don't know.

2 THE COURT: Why don't we do this, because I think this
3 will, I think, short-circuit some of it.

4 For the entities -- and I'm not sure if it's Exhibit
5 28, but for -- no, it's not 28. I'm sorry.

6 But for the entities that we're talking about that are
7 Mr. Ferguson's book of business, for lack of a better term, for
8 the transition, all of the accounts that went to the house
9 accounts, I'd like to -- I don't necessarily need to get all of
10 the agreements, but I just want to know whether the agreements
11 that those entities had *vis-à-vis* their retirement plans,
12 whether those agreements were solely with either SagePoint at
13 one point or transitioned over to MMA Securities.

14 MR. WICKHAM: We'll look into that, your Honor. But,
15 I mean, we're talking about, to some extent, apples and
16 oranges. You've got MMA over here; you've got MMAS over here.
17 MMAS has -- is the regulated entity, FINRA-regulated entity.

18 To the extent that retirement service planning
19 transactions involve a regulated transaction, the purchase and
20 sale of a security, then they necessarily will have an
21 agreement in place with MMAS, because that's the regulated
22 entity.

23 But to have one does not exclude the other. You could
24 have both; and that one can be a client of MMA and have the
25 regulated entity.

JA2VMARHredacted

Calder - cross

1 THE COURT: I understand that there may be -- and I
2 think we saw on the chart that the client may, in addition to
3 having business that are retirement related, have other
4 business with Marsh, insurance-related business. I get that.

5 MR. WICKHAM: Right.

6 THE COURT: What I'm trying to get my mind around,
7 because there is the argument that's being made that Mr. -- and
8 again, I have not delved incredibly deeply into the issue of
9 whether this should be arbitrated or not under FINRA. And I'm
10 trying to get a sense of what the business is. And again, I
11 haven't -- as I said, I haven't gone and looked at the case law
12 on this in particular concerning that issue. And that's really
13 where I was going. I'm not in any way saying that you can't
14 have both, but I'm just trying to -- with regard to what
15 Mr. Ferguson was involved with, I'm trying to, sort of, figure
16 out what the landscape is.

17 MR. WICKHAM: So maybe I can help out.

18 It just goes back to the principal dichotomy between a
19 producer, somebody who's engaged in sales, versus somebody
20 who's engaged in service. Producers, that's what they are
21 doing, they are selling plans to clients and, therefore, you
22 know, they are engaged in the purchase and sales of securities.
23 So when Mr. Ferguson was a producer and he had his license and
24 so on and so forth, then he's at the apex of his regulated
25 activity.

JA2VMARHredacted

Calder - cross

1 Once he moved from the producer category to the
2 service category, and he continued to maintain fiduciary
3 responsibilities for some clients that were assigned to him,
4 not his clients, then he's not selling to them. So, you know,
5 so there's less regulated activity. He's doing the servicing,
6 holding 401(k) meetings, and things of that sort.

7 So it's hybrid that there are activities that he is
8 engaged in as an MMA client service executive that is not
9 regulated activity. That's not necessarily to the exclusion
10 that there might be some regulated activity that he's engaged
11 in. So it's a hybrid situation.

12 THE COURT: I understand that.

13 MR. WICKHAM: And they have the contracts in place
14 from a regulated regulatory standpoint that they to have the
15 regulatory contracts with the regulated entity, because that's
16 what's required under FINRA regulations for that type of
17 business. But, again, it's not to the exclusion of the other,
18 it's in addition to the other.

19 THE COURT: Okay.

20 MR. FERGUSON: Your Honor?

21 THE COURT: Just one second.

22 Do you know, Mr. Calder, whether any of the -- over
23 the past -- since you've been with Marsh, have any -- have
24 there been any FINRA arbitrations involving employees in the
25 bay area?

JA2VMARHredacted

Calder - cross

1 THE WITNESS: No.

2 THE COURT: Okay. All right.

3 Go ahead, Mr. Ferguson.

4 MR. FERGUSON: Your Honor, pretty much everything
5 counsel just said is incorrect. You settle -- the securities
6 does not stop -- I can't sell a plan and then go talk about
7 investments and say, Oh, that's not under securities law.

8 Anything --

9 THE COURT: Let me ask, actually, Mr. Calder, would
10 someone who is not a registered -- who's not registered be able
11 to service a 401(k) plan? In other words, go in and hold the
12 meetings with the employees about the plan. Let's say new
13 employees come in, and he gives the person his task with going
14 in and explaining the plan, what the options are, does that
15 person have to be a registered broker?

16 THE WITNESS: So I think there are certain parts of
17 that job that don't require that, if you're explaining general
18 information about the plan. But once you get into actual
19 investment options, I believe that's regulated.

20 THE COURT: Okay.

21 Do you know, are there any individuals in the bay area
22 who would go in and do those meetings who aren't -- who weren't
23 registered?

24 THE WITNESS: No.

25 THE COURT: Okay. All right.

JA2VMARHredacted

Calder - cross

1 Go ahead, Mr. Ferguson.

2 BY MR. FERGUSON:

3 Q. Jeff, do you know how long I've been doing securities?

4 A. No.

5 Q. It's public knowledge, first registered in 1998.

6 I have my Series 24; correct?

7 A. I don't know.

8 Q. Do you know what a Series 24 is?

9 A. No.

10 Q. Could we assume I had a lot of securities registrations?

11 A. I can't assume anything, Rick.

12 Q. But you were my supervisor.

13 A. Yup.

14 Q. But you didn't know my clients, you didn't know if they
15 were securities, you didn't know my registrations?

16 A. I knew you were registered, and I knew that you were acting
17 within the scope of your license.

18 Q. Was any other member of MMA allowed to go out and do any
19 retirement services meetings?

20 A. I don't know --

21 THE COURT: Other than someone who's registered, is
22 that the question?

23 MR. FERGUSON: Sure. Correct.

24 Q. Other than myself, because I was the only registered person
25 there.

JA2VMARHredacted

Calder - cross

1 A. No.

2 Q. So nonregistered persons, as a matter of securities rules,
3 cannot go out and talk about retirement services; they can't
4 sell it, they can't service it. It's investment-related,
5 right, so they can't talk about it?

6 A. I don't know.

7 Q. The same tab, can you see page 3?

8 THE COURT: Just before you move on, Mr. Ferguson,
9 with regard to Exhibit 2, Kevin Bowler, do you know Mr. Bowler?

10 THE WITNESS: I know who he is.

11 THE COURT: Okay. Did you ever interface with
12 Mr. Bowler concerning Mr. Ferguson's employment?

13 THE WITNESS: I did not.

14 THE COURT: Do you know whether HR, whether they ever
15 interfaced with Mr. Bowler with regard to Mr. Ferguson's
16 employment?

17 THE WITNESS: I don't think they did. They interfaced
18 with Bill Peartree.

19 THE COURT: Do you know if Mr. Peartree interfaced
20 with Mr. Bowler regarding Mr. Ferguson's employment?

21 THE WITNESS: I don't know that.

22 THE COURT: Okay.

23 I'm sorry. Go ahead, Mr. Ferguson.

24 MR. FERGUSON: Thank you, your Honor.

25 BY MR. FERGUSON:

JA2VMARHredacted

Calder - cross

1 Q. So moving on, page 3 --

2 THE COURT: Of? I'm sorry.

3 MR. FERGUSON: I'm sorry, we're still on tab 2.

4 THE COURT: Okay. I'm sorry. Go ahead.

5 BY MR. FERGUSON:

6 Q. Jeff, do you see there the section I marked "Arbitration"?

7 A. Yup.

8 Q. And the second paragraph: The parties agree that any
9 dispute, claim, or controversy arising out of or relating to
10 this agreement, including breach, termination, validity of, or
11 arising out of or relating to the consulting services for the
12 plans. And it goes on to say basically this whole thing is
13 saying anything, any disputes for any clients that are
14 securities clients must be taken to FINRA for arbitration.

15 A. I don't know how to interpret that. But I will say that I
16 think this relates to the relationship between MMA and
17 [REDACTED]. I don't think it has anything to do with
18 intellectual property and confidential assets being taken from
19 us.

20 Q. Correct what I've just heard, you said this has to do
21 between MMA and [REDACTED]. Did you mean MMA Securities?

22 A. Yes, MMA Securities, Rick.

23 Q. So we're at least in agreement, correct, that all the
24 clients I worked with and the only services I provided under
25 the retirement plan line of business were through MMAS, because

JA2VMARHredacted

Calder - cross

1 of these agreements, they were all securities clients?

2 A. I don't know the full knowledge of that; I hadn't had a
3 chance to do that. But I would assume, Rick, that you're
4 right.

5 Q. If we can turn -- staying on that same tab, turn back to --
6 to get to the required disclosures, and there's one at the top,
7 it's page 1.

8 A. I'm sorry, what page are you on?

9 Q. I'll count them out. So go through the agreement. 7, 8,
10 9, 10. The end of that agreement is page 12, then it starts
11 over on page 1.

12 A. Okay.

13 Q. Do you know what this document is?

14 A. No.

15 Q. So this is a Form ADV, part 2A and 2B. This is a required
16 part of MMA agreement. A securities client cannot be given an
17 agreement without these forms.

18 The first part here is the brochure that covers MMA
19 Securities, and it screws through that. It's MMA Securities.
20 A lot of information about MMA Securities.

21 But if you go to the end of that document into the
22 next one, where it starts over again on page 1.

23 A. Okay.

24 Q. Do you see the top there, ADV 2B brochure supplement?

25 THE COURT: ADV.

JA2VMARHredacted

Calder - cross

1 MR. FERGUSON: ADV.

2 THE COURT: I'm only doing that, Mr. Ferguson, just to
3 make sure that the court reporter has an understanding.

4 So ADV 2B, as in "boy," at the top.

5 Q. Who is listed there as the specific adviser for this
6 client?

7 A. Elmer Richard Ferguson.

8 Q. Me, correct?

9 A. Yes, you.

10 Q. So you do see that securities clients and securities
11 agreements are required to specifically name the adviser who's
12 giving investment advice; correct?

13 A. I don't know that. I haven't read this agreement in total.
14 I don't know that from the knowledge I have.

15 Q. Jeff, how long again did you work with me at MMA/Barney &
16 Barney, knowing that I worked out of retirement services,
17 knowing that I did these contracts?

18 A. You transferred into the bay area in 2012, Rick.

19 Q. But you've never seen an agreement between MMAS and a
20 retirement client?

21 A. I've never seen an agreement between MMAS and a retirement
22 client.

23 Q. Can we agree that this agreement between a client and MMAS
24 does not include MMA, and it specifically calls for me?

25 A. I can't agree to that. I haven't read the whole document.

JA2VMARHredacted

Calder - cross

1 Q. Fair enough.

2 THE COURT: Let me ask Mr. Wickham, is there any
3 objection to this exhibit?

4 MR. WICKHAM: No, your Honor.

5 THE COURT: Okay. All right.

6 Go ahead, Mr. Ferguson.

7 And Mr. Ferguson, all that means is that Mr. Wickham
8 is saying I can consider it, but he's not necessarily conceding
9 exactly what the terms in here would necessarily mean, but that
10 this is appropriately before me.

11 MR. FERGUSON: I understand, your Honor.

12 THE COURT: All right.

13 BY MR. FERGUSON:

14 Q. Jeff, did I recently, to your knowledge, refer a client to
15 MMA?

16 A. I don't have knowledge of that.

17 Q. Do you know [REDACTED]?

18 A. I've seen the name on the list, yes.

19 Q. They are actually on that exhibit we looked at earlier;
20 correct?

21 A. Mm-hmm.

22 Q. On there it said that [REDACTED] was referred to
23 me by Sheman, Rob -- that means Rob Sheman; correct?

24 A. Right.

25 Q. Does Rob Sheman have that as a client?

JA2VMARHredacted

Calder - cross

1 A. I don't know.

2 Q. Isn't it true that just a couple of months ago -- isn't it
3 true that [REDACTED] has been my client for years?

4 A. I don't know that.

5 Q. You don't know any of my clients?

6 A. I know many of your clients. I don't know [REDACTED]

7 [REDACTED].

8 Q. But why would that be?

9 A. I don't know every client we have in the office, Rick.

10 Q. When we met, did we go over -- from reviews and things like
11 that, did we go over my book of business?

12 A. No.

13 THE COURT: And just to be clear, when you say "when
14 we met," you mean initially when you came over to the bay area?

15 MR. FERGUSON: No, for annual reviews.

16 THE COURT: Oh, okay.

17 MR. FERGUSON: In annual reviews when we would meet to
18 over your clients, your prospects, how are you doing, what's
19 the income, where's everything stand.

20 THE COURT: Okay. So I think you mean annually.

21 THE WITNESS: So annually you do a workbook with a
22 list of your clients, the revenues, and the expected clients
23 and revenues for the following year. I don't recall all the
24 names in the workbook.

25 BY MR. FERGUSON:

JA2VMARHredacted

Calder - cross

1 Q. About how many clients did I have, do you know?

2 A. I think you had close to 25 clients.

3 Q. Would it surprise you to know that I had about 50 clients?

4 A. Yeah.

5 Q. Okay. When we met, did we talk about those clients?

6 THE COURT: And again, these are meetings, the
7 annual --

8 Q. The annual review meetings.

9 A. Not in detail, no.

10 Q. Did we mention them?

11 A. No, we didn't mention clients specific in those meetings.

12 Those meetings that we did were based for budgeting purposes.

13 I looked at the workbook in total for all of our producers.

14 Q. But I wouldn't be privy to the workbook for all of the
15 producers, would I?

16 A. No.

17 Q. So when we met, we looked at the workbook for me?

18 A. We may have, but I didn't look at it client by client.

19 Q. If we can go to Exhibit 3. And this is Plaintiff's Exhibit

20 A from the declaration.

21 THE COURT: From Mr. Calder's declaration?

22 MR. FERGUSON: I believe this was from Mara Crain.

23 THE COURT: Okay. All right. Oh, okay. And I think
24 we may have talked about this exhibit earlier.

25 Go ahead.

JA2VMARHredacted

Calder - cross

1 BY MR. FERGUSON:

2 Q. Jeff, do you see down there Item 1, "Confidential
3 Information and Trade Secrets?"

4 A. Yes.

5 Q. Do you see where it does call out some specifics. And it
6 claims... such as the identity of the company client, names of
7 representatives of the company's responsible for entering into
8 contracts, amounts paid by such clients of the company, policy
9 expiration dates, policy terms and conditions, information
10 regarding the markets or sources with which insurance is
11 placed. Do you see that?

12 A. Yes.

13 Q. Does this sound like securities?

14 A. Well, a lot of this has nothing to do with securities. But
15 information regarding our clients and the revenue has
16 everything to do with your book of business.

17 Q. Which you didn't know what my book was; correct?

18 A. Right.

19 Q. So this agreement, this nonsolicitation and confidentiality
20 agreement, was mainly for insurance, because that's MMA's lines
21 of businesses; correct?

22 A. I don't know that.

23 Q. Do retirement plans have policy expiration dates?

24 A. I don't know.

25 Q. Do retirement plans have insurance markets and sources?

JA2VMARHredacted

Calder - cross

1 A. No.

2 Q. Who owns MMA Securities?

3 A. I don't know.

4 Q. Could we go to Exhibit 4?

5 Do you see this is one of the agreements between
6 myself and, at this time, January 31st, 2014, it was being
7 prepared between myself and Barney & Barney LLC, a wholly owned
8 subsidiary of Marsh & McLennan Agency LLC; correct?

9 A. Correct.

10 MR. WICKHAM: Where does it say "wholly owned
11 subsidiary"?

12 THE COURT: Let's see. I'm not sure.

13 At the top it just says "A Marsh & McLennan Agency."

14 MR. FERGUSON: I apologize to everyone. Only Jeff and
15 I would know that. That was the company name. Going forward
16 after February 1st, 2014, the company was known as Barney &
17 Barney LLC, a wholly owned subsidiary of Marsh & McLennan
18 Agency LLC.

19 THE COURT: Okay. That's not in this document.

20 THE WITNESS: And I don't believe that's true.

21 MR. WICKHAM: And I don't believe that's -- yes, thank
22 you.

23 BY MR. FERGUSON:

24 Q. Can you go to tab 16.

25 Do you recognize this document?

JA2VMARHredacted

Calder - cross

1 A. Yes.

2 Q. Can you tell us what it is?

3 A. It's a document that was prepared to answer frequently
4 asked questions about our acquisition by Marsh & McLennan.

5 Q. Can you go to page 5.

6 THE COURT: By "our acquisition," are you referring to
7 Barney & Barney acquisition? In other words, the acquisition
8 of Barney & Barney by Marsh & McLennan?

9 THE WITNESS: Correct.

10 THE COURT: Okay.

11 Go ahead. Page what?

12 Q. So page 5, under where it says: About our brand. Will our
13 logo and name change?

14 Do you see there about the second -- the third
15 sentence: Our new name is Barney & Barney, A Marsh & McLennan
16 Agency LLC company.

17 A. Yeah.

18 Q. So I had the terminology wrong, but Barney & Barney, A
19 Marsh & McLennan Agency LLC company; correct?

20 A. Yes.

21 Q. So we do agree it was not Barney & Barney, it was Barney &
22 Barney, A Marsh & McLennan Agency LLC company?

23 A. Commonly referred to as "Barney & Barney."

24 Q. Let's go back to Tab 4.

25 So we've seen that this is dated January 31st, 2014.

JA2VMARHredacted

Calder - cross

1 Do you see the signature date?

2 A. Yes.

3 Q. So it's February 11, 2014. So the same time we're doing
4 this.

5 Do you see on page 1, the fourth paragraph: You agree
6 that prior to the termination of your relationship with
7 broker-dealer, you will not hold yourself out as an employee or
8 agent of the company for purposes of selling or servicing
9 broker-dealer products. In providing such services to
10 broker-dealer, you agree that you will not make any written or
11 verbal reference to the company except as necessary to fully
12 and accurately disclose your relationship with the company.

13 Why would that be in there?

14 A. I don't know.

15 Q. Do you see down there, the fifth paragraph, it says: In
16 consideration -- second sentence: In consideration for the
17 company solely providing ministerial and administrative support
18 to you relating to the broker-dealer products, you shall pay
19 the company an annual fee, it looks like it was [REDACTED], but
20 that was crossed out, and it was [REDACTED]; correct?

21 A. Yes.

22 Q. Jeff, isn't it true that in 2014, I told MMA the agreement
23 that they originally had us sign, that they pressured us to
24 sign prior to 2/1/2014, was not compliant with securities
25 rules?

JA2VMARHredacted

Calder - cross

1 A. I don't know that.

2 Q. And isn't it true that that's what happened; we signed this
3 document because I pointed out to MMA you have to separate the
4 two companies. MMA cannot be an unregistered broker-dealer;
5 you must separate out. And that's why this document was
6 signed; isn't that correct?

7 A. I don't know.

8 Q. Who would know?

9 A. Bill Peartree.

10 Q. Would Paul Hering know? He signed it.

11 A. I don't know that he would have knowledge of that.

12 Q. Why would Barney & Barney, an MMA company, agree to stating
13 that they're only providing ministerial and administrative
14 support to -- specifically to securities relationships?

15 A. I don't know.

16 Q. Could it possibly be true that all of the work I do and did
17 for MMA and Barney & Barney and all the other entities we're
18 talking about, specifically had to be under the securities
19 side; MMA is not allowed to control those clients, they are not
20 allowed to be paid that money directly, because otherwise they
21 would be an unregistered broker-dealer?

22 A. I don't know, Rick.

23 Q. Do you see on -- these pages aren't numbered, I'm sorry.

24 Page 2 at the bottom: Please acknowledge your
25 acceptance of the terms stated in this letter by signing below

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Calder - cross

1 and by signing the nonsolicitation and confidentiality
2 agreement and returning all of these documents, signed
3 documents, to Kelli Clear by February 12, 2014. We've enclosed
4 two copies of each document so that you can retain one for your
5 reference.

6 A. Yes, I see that.

7 Q. Where is the nonsolicitation and confidentiality agreement?
8 MMA probably has a copy, right, they just didn't produce it
9 today or --

10 A. I don't know.

11 Q. But it does say -- this contract says there's supposed to
12 be one as of this date; correct?

13 A. That's right.

14 Q. Do you see, same page --

15 THE COURT: Well, do you have a copy of it?

16 MR. FERGUSON: No.

17 THE COURT: Because it says that -- that you can
18 retain one for your reference.

19 MR. FERGUSON: No.

20 THE COURT: Okay.

21 MR. FERGUSON: There is one -- there is not one. But
22 I'm not allowed to say that, right?

23 MR. WICKHAM: Your Honor, this is the offer letter
24 that was going out to the employees of Barney & Barney when
25 Barney & Barney was being acquired by MMA. The B&B/MMA

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Calder - cross

1 nonsolicitation and confidentiality agreement was the document
2 that was executed by all Barney & Barney employees in
3 connection with the acquisition. So the reference in the offer
4 letter is to that agreement that we saw earlier.

5 THE COURT: Okay.

6 MR. FERGUSON: Counsellor, I disagree.

7 They specifically name one that goes with this for the
8 date.

9 THE COURT: Well, what I would ask is the following:

10 Mr. Wickham, if you could specifically check with
11 regard to -- if Marsh has it, with regard to this document was
12 attached to it, or generically what was attached to it. In
13 other words, I'm not saying that you're not accurate, I just
14 want to know and see that that document basically coincides
15 with what we were looking at earlier, the Barney & Barney
16 agreement.

17 MR. WICKHAM: Well, number one, we'll double-check and
18 absolutely respond back to the Court. We also will get a copy
19 of Mr. Calder's agreement. It just so happens that were we to
20 go back and visit that other agreement, that given the recitals
21 in connection with that agreement that specifically
22 represent -- that reference the acquisition, that that is --
23 that is the form of the agreement that accompanied the offer
24 letter that was going to all the Barney & Barney employees.

25 THE COURT: Okay. But you referenced -- my

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Calder - cross

1 understanding of what you were saying is that that agreement
2 was something you looked at earlier.

3 MR. WICKHAM: Yes, your Honor.

4 THE COURT: Okay. All right.

5 And was something that went out to, at the time --
6 let's see. Was it exhibit --

7 MR. WICKHAM: It's Exhibit 3 of the plaintiff's
8 exhibits.

9 THE COURT: Okay.

10 MR. WICKHAM: And you see on Mr. Ferguson's copy, he
11 wrote in or somebody wrote in February 1, which is two days
12 after the offer letter was issued to him, ten days earlier than
13 his signature on the offer letter.

14 THE COURT: Yes.

15 MR. FERGUSON: Where do you see February 1 is two days
16 after the offer letter? What offer letter?

17 MR. WICKHAM: The offer letter --

18 THE COURT: No, no, just --

19 MR. WICKHAM: The January 31 offer letter. One day
20 after, excuse me.

21 THE COURT: Okay. Go ahead, Mr. Ferguson.

22 If you could just check.

23 MR. WICKHAM: We will, your Honor.

24 THE COURT: All right.

25 BY MR. FERGUSON:

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Calder - cross

1 Q. Jeff, isn't it true there's no known solicitation and
2 confidentiality agreements with this for the same reason: You
3 told MMA a securities person cannot agree to an agreement that
4 specifically removes arbitration, because under FINRA law,
5 FINRA regulation, I'm required to be bound by that?

6 MR. WICKHAM: Objection.

7 THE COURT: Well, do you know -- I understand the
8 objection, but do you know one way or the other?

9 THE WITNESS: I do not.

10 THE COURT: Okay. Go ahead.

11 BY MR. FERGUSON:

12 Q. Jeff, okay, go back to page 2. About halfway down it says,
13 In addition -- I'm sorry. In consideration, for your execution
14 of this offer letter and the nonsolicitation and
15 confidentiality agreement, you will receive a retention bonus
16 in the amount of -- somebody got [REDACTED], I got [REDACTED]. This
17 bonus payment will be made no later than February 28, 2014.

18 In addition, you will receive additional bonus
19 payments in the amount and the date set forth in Schedule A.

20 And then down below it says: In addition, you may
21 also be eligible for certain amounts under and subject to the
22 terms and conditions of Barney & Barney division payment plan.

23 Do you see that?

24 A. I do.

25 Q. I just want to make sure that we know -- so go out to the

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Calder - cross

1 signature page. Do you see Schedule A?

2 A. I do.

3 Q. So the first payment of [REDACTED] and the second payment was
4 due July 30th, 2014; correct?

5 A. Yes.

6 Q. It matches up to the other agreement; correct?

7 A. What other agreement?

8 Q. Sorry, the one you submitted as your exhibit -- I'll
9 retract the question; we'll come to it in a moment.

10 Can we please go to exhibit -- Tab 63. This is a
11 thick manual, isn't it?

12 THE COURT: I'll note for the record it's about an
13 inch or so or more. It's several -- I don't know how many
14 pages it is, because they're not sequentially numbered, but
15 probably a couple hundred pages or so, although I'm not sure.

16 But go ahead. It is what it is. So it's Exhibit 63,
17 and it's a multi-page document. Go ahead.

18 BY MR. FERGUSON:

19 Q. Jeff, do you see the title of this on the very first page,
20 "Investment Adviser Policies and Procedures Manual, June 2017"?

21 A. I do.

22 Q. You see at the top there it's MMA Securities?

23 A. Yes.

24 Q. Why would MMA Securities have this huge policies and
25 procedures manual if they're controlled, owned, and operated by

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Calder - cross

1 MMA, which has its own compliance department?

2 A. I believe I said I wasn't sure how they were run.

3 Q. Can you please turn to page 1 tack 1?

4 A. 1 tack 1?

5 Q. I'm sorry, 1-1.

6 Do you see under 1, Introduction, the fourth paragraph
7 down: IA representatives, investment adviser supervisors,
8 supervised persons, and officers and directors are all
9 considered firm personnel.

10 Why would MMA Securities consider -- I apologize,
11 Jeff. I was an investment adviser representative; correct?

12 A. Yes.

13 Q. Why would MMA Securities consider me one of their firm
14 personnel?

15 A. I don't know.

16 Q. Did MMA Securities and MMA have different operating
17 structures, different entities? Was anything different between
18 the two? It seems like that's what we're seeing. And I just
19 need clarification.

20 You stated many times in your declarations and in the
21 complaint, I was an employee of MMA and not with MMA
22 Securities. But here, MMA Securities is kind of claiming me,
23 aren't they?

24 MR. WICKHAM: Objection.

25 A. I don't know. I haven't read through this agreement.

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Calder - cross

1 Q. But you do see there where it says: Investment adviser
2 representatives are all considered firm personnel?

3 A. Yes.

4 Q. Can you please turn to Tab 5.

5 A. Okay.

6 Q. Do you see this is an email between quite a few people,
7 myself, mainly Kim Blackmore.

8 Do you know who Kim Blackmore is, Jeff?

9 A. I do not.

10 Q. Do you see there she states: Hi, Rick. I've set up a call
11 on Monday, June 25th, 9 a.m., to address any questions. That
12 was the soonest that you were available. I've answered the
13 questions in red below, but it's better to go through this over
14 the phone. And I do apologize, because the red is obviously
15 not showing up, but we can see my questions, right?

16 Number one -- and this is -- what's the date on this?
17 June 19th, 2018; correct?

18 A. Correct.

19 Q. What is my rep ID with MMA Securities for our vendor
20 contracts and payments? Question.

21 So here's where her answer starts: There are two
22 numbers, depending on what the form requires. Your CRD number,
23 which for everyone's benefit, is FINRA number; and your
24 internal producer code with MMAS is as stated.

25 Why would someone from MMAS be telling me that I'm a

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Calder - cross

1 producer, when your declarations, all of the things submitted,
2 and even the testimony today, is very clear that I was not a
3 producer for any MMA reason?

4 A. I agree. You weren't.

5 Q. So this person was lying?

6 A. I'm not saying lying. It's probably mistaken or a
7 different way to talk about coding.

8 Q. You do agree it says here's your internal producer code,
9 and there is a code; correct?

10 A. I see that.

11 Q. On the second question: How do I access the MMA Securities
12 website, i.e., run commission and income reports, client
13 management, investment product affiliations, etc.

14 MMA Securities uses the MMA systems for all
15 operational financial processing. Benefitpoint is used to set
16 up all clients once we have received all the executed client
17 documents. We also use that system, along with Sagitta, to
18 process invoices and all commissions and fee payments.
19 Unfortunately, we are unable to give anyone, except the
20 operations and finance teams, access to these systems since
21 there's no "view access" only.

22 Did I have access to MMA systems?

23 A. No.

24 Q. Do you think -- would you agree with me that it's a little
25 hard for someone to steal information when they don't even have

JA2VMARHredacted

Calder - cross

1 access to those systems where the information resides?

2 A. I can't agree to that.

3 Q. Can you turn to Exhibit 6 please.

4 Do you see at the top it says MMC Securities,
5 registration disclosure?

6 A. Yes.

7 Q. So do you remember and agree that originally myself, Bill,
8 the retirement services team, when MMA first bought Barney &
9 Barney, we were still using SagePoint Financial as our
10 broker-dealer; correct?

11 A. Correct.

12 Q. And then MMC companies wanted us to be duly registered with
13 MMC Securities so that our retirement plan commissions could
14 flow properly, broker-dealer to broker-dealer, free page rate
15 and up the corporate line to MMA companies; correct?

16 A. I don't know.

17 Q. Do you see there it says: To: Prospective registered
18 representatives of MMC Securities Corp.?

19 A. I see that.

20 Q. Subject: Predispute arbitration clause in Form U-4.

21 A. I see that.

22 Q. Do you want to take a moment and read through there, or I
23 can give you a synopsis.

24 Doesn't it show --

25 A. I'll read it.

JA2VMARHredacted

Calder - cross

1 Q. Okay.

2 (Pause)

3 A. Okay.

4 Q. So right at the top there, this written disclosure is
5 provided to you, as required by the NASD -- which we now know
6 is FINRA -- Conduct Rule 3080. Please read this disclosure
7 carefully before you sign your Form U-4. If you have any
8 questions regarding this matter, please contact.

9 Second paragraph: The Form U-4 contains a predispute
10 arbitration clause. It is in Item 5, Section 15A of Form U-4.

11 So when I was first registered with any of the MMA/MMC
12 companies, I was required to have a U-4, which is appropriate
13 for somebody who's securities registered. Why would they have
14 told me that there's an arbitration clause?

15 A. I'm assuming that for disputes relating to securities
16 issues, you have to go to arbitration.

17 Q. So anything regarding securities clients has to go to
18 arbitration, securities disputes?

19 A. Which I would say investment advice, that sort of thing. I
20 would not include trademark or copyright or stealing our
21 information. I wouldn't think that would be covered by this
22 whatsoever. Totally separate issue.

23 Q. Let me know when you're done.

24 A. I'm done.

25 Q. Is a client's name trademarked for MMA? Do they own it?

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Calder - cross

1 A. I didn't say that. I didn't mean trademark.

2 Q. Can you please turn to Tab 7. This is the amended FINRA
3 Form U-5 that allegedly MMA had MMAS file with FINRA. Do you
4 see there at the top, "Disclosure Occurrence Composite"?

5 A. I do.

6 Q. Do you see that MMA Securities filed an original report
7 first reported March 13th, 2019?

8 A. Where do I see that date?

9 Q. Six inches down from the top, kind of in the middle, a
10 little to the right.

11 THE COURT: I think on the left it says -- it's a
12 latest filings, and then if you go across from there.

13 THE WITNESS: I see that.

14 THE COURT: There's a first reporting column.

15 THE WITNESS: Okay. I see that.

16 Q. So you see there that MMAS filed a report with FINRA on
17 March 13th, 2019. And do you see there where they say the
18 event date, February 14th, 2019?

19 A. I do.

20 Q. If you could go down to the bottom of that page. You see
21 where it has Part I, and it has Nos. 1, 2, and 3?

22 A. Yup.

23 Q. No. 3: Describe briefly the nature of the internal review.
24 And the information must fit within the space provided. And
25 MMA has put: Intentional removal of company property such as

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Calder - cross

1 client contact information, also solicitation of institutional
2 clients and prospective clients while licensed with MMA
3 Securities on behalf of unaffiliated third party before
4 termination.

5 A. I see that.

6 Q. This sounds almost exactly like what we're arguing about
7 here today, doesn't it?

8 A. I mean as it relates to this document, I see that. I don't
9 think that has anything to do with what's going on today, with
10 the downloading of our information from MMA systems.

11 Q. Why would MMA Securities file these same complaints with
12 FINRA if it was agreed between the companies that these were
13 MMA clients' information?

14 A. It's my understanding that this is a dual action. FINRA is
15 doing an investigation, and we are taking our action.

16 Q. Well, I guess I'm confused. Because MMAS, MMA Securities,
17 are stating these are their clients.

18 A. It's our information.

19 Q. You stated MMA directly controls MMAS.

20 A. I didn't say that.

21 Q. You did in your declaration.

22 Well, we can just ask. Does MMA control MMAS?

23 A. I don't know that they do.

24 Q. Can you go to Tab 8.

25 This is the inquiry letter that FINRA sent to me. You

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Calder - cross

1 see the second paragraph: On March 13th, 2019, and April 24th,
2 MMA Securities LLC, MMA Securities of the firm, filed Form U-5s
3 on your behalf reflecting that you were the subject of an
4 internal review. I'm going to skip a sentence. For
5 intentional removal of company property, including deletion of
6 company data, also solicitation of institutional clients and
7 prospective clients while licensed with MMA Securities on
8 behalf of unaffiliated third party before and after
9 termination.

10 So they are repeating the same things that MMA has
11 said; correct?

12 A. Yes.

13 Q. So FINRA is investigating me because MMA Securities said,
14 These are our clients and our information; correct?

15 MR. WICKHAM: Objection.

16 Mischaracterizes the form. Foundation.

17 THE COURT: All right.

18 I'll allow it. You can answer the question.

19 A. Could you ask it again, Rick?

20 Q. Isn't it true FINRA is investigating me because MMA
21 Securities told them, These clients and this information is
22 ours, and he took it?

23 A. I don't know that that is the only reason they are
24 investigating you. I know we have a dual action pending.

25 Q. Well, let's read that again: Intentional removal of

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Calder - cross

1 company property, including deletion of company data, also
2 solicitation of institutional clients and prospective clients
3 while licensed with MMA Securities on behalf of unaffiliated
4 third party before and after termination.

5 But you don't think that sounds like exactly what
6 we're doing here today?

7 A. It is what we are doing today.

8 Q. So, Jeff, are these clients of MMA or are they clients of
9 MMA Securities? Because there seems to be a fight going on
10 between MMA and MMA Securities.

11 A. I can't answer that question.

12 Q. If it was found that these are all clients and information
13 of MMA Securities, should MMA be allowed to say that they were
14 theirs?

15 A. Yeah. We paid for those clients. We paid to obtain those
16 clients. We paid to service those clients. We paid payroll
17 taxes on employees who were -- so, yes, we're entitled to
18 protect our information, as we had set forth in our employment
19 agreements.

20 Q. So the money that's earned from these contracts doesn't go
21 to MMA; MMA is paying all of this stuff just out of their
22 pocket, the goodness of their heart?

23 A. At the end of the day, the money comes to MMA.

24 Q. So really the money for all these activities you just
25 described come from the activities of these clients and these

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Calder - cross

1 contracts with MMA Securities?

2 A. Yes.

3 Q. I'm sorry, but doesn't that just contradict what you just
4 said?

5 A. I don't think so.

6 Q. You said MMA paid for these things.

7 A. We do.

8 Q. Didn't you say MMAS paid for these things?

9 A. If I said that, I didn't mean that. We paid for these
10 things.

11 Q. With money that came from MMAS?

12 A. With money that came through MMAS.

13 Q. You said earlier that when a producer like myself -- I know
14 you find that offensive, so someone like myself, when we have
15 an annual review, you said we sit down and look at a client
16 list, we talked about budgeting.

17 Is it normal process at MMA for you to analyze how
18 much was spent on all those things you just mentioned,
19 marketing, things like that, and then attribute it to that
20 client and balance it out and say, How much did we spend on
21 that client; how much did that client bring in?

22 A. I don't usually view it in that micro environment, but I
23 will have that discussion if it's out of line.

24 Q. Does MMA have a process called chargeback?

25 A. We do.

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Calder - cross

1 Q. And what is that?

2 A. So chargebacks are charged back to a book if there are
3 excessive expenses. But the chargeback, although taken from
4 the book for a producer, a producer's revenue is only reduced
5 20 percent; MMA pays 80 percent of that cost.

6 You are not subject to the chargeback; you are a
7 client service executive. In 2018, and the first two months of
8 2019, we spent [REDACTED] on your travel and expenses.

9 Q. And MMA would know which clients those were?

10 A. Yeah, they would on, some level, sure. It's reported.

11 Q. So we come full circle.

12 MMA is keeping track of how much money they make on a
13 client and how much they spend on it; and that money that they
14 made on the client came from MMAS, my activities or some other
15 producer's activities under MMAS.

16 A. The money we make comes from our clients.

17 Q. Which, as we've stated, we figured out earlier the
18 clients -- all that money for securities, that the only
19 business I did, that goes to MMAS first?

20 A. I am not sure of the financial flow.

21 Q. Can we go back to No. 7, the disclosure occurrence
22 composite. Do you see -- after we looked at the event dates,
23 the latest filings, you said the internal review, 4/24/2019;
24 correct?

25 A. That's what it says, yes.

JA2VMARHredacted

Calder - cross

1 Q. So from the period February 14th, 2010, the incident
2 report, through 3/13, up to 4/24, we have MMA -- is it correct
3 that we have MMA Securities investigating and filing because
4 they say, Well, these are our clients.

5 And MMA is filing, saying, Well, no, they are our
6 clients.

7 Did MMA at any time say to MMAS, No, these are our
8 clients; we're going to file. Or was it specifically
9 independent of each other?

10 A. Independent of each other.

11 Q. Earlier you had said that --

12 THE COURT: Let me ask, when you say "independently of
13 each other," I'm not sure what that -- I know that they were
14 filed obviously independently. In other words, that --

15 THE WITNESS: FINRA started their own investigation,
16 and we were doing our own investigation as well.

17 THE COURT: Okay. But FINRA's investigation was, in
18 essence, kicked off by the disclosure, is that your
19 understanding?

20 THE WITNESS: It's my understanding, yes.

21 THE COURT: Okay. Okay.

22 Go ahead, Mr. Ferguson.

23 BY MR. FERGUSON:

24 Q. Earlier you had testified that MMA and MMAS are very
25 integrated. You kind of described them as basically one

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Calder - cross

1 company.

2 A. I don't remember saying that.

3 THE COURT: I don't think that was his phraseology,
4 but just ask the question.

5 MR. FERGUSON: I'll rephrase the question.

6 Q. Does MMAS take the standpoint that all of the retirement
7 services are under them?

8 A. I don't have insight into MMAS, Rick.

9 Q. I apologize.

10 Did MMA take the standpoint that retirement services
11 are offered under them?

12 A. Yes.

13 Q. Do they have it on the website?

14 A. Yes.

15 Q. Does that sound like an integrated company?

16 A. Well, then you could say that SagePoint and MMA were an
17 integrated company, and we were anything but.

18 Q. Does SagePoint have a completely separate website where
19 they advertise? Do they advertise MMA products?

20 A. I don't think so. I don't know.

21 Q. But MMA does, they specifically state, We have retirement
22 plans?

23 A. Yes.

24 Q. So isn't that completely different?

25 A. I don't know.

JA2VMARHredacted

Calder - cross

1 Q. How come at no time did MMA ask -- or, I'm sorry, at no
2 time did MMA say, Hey, hold on. You can't file that, MMAS,
3 these are our clients?

4 A. MMAS has to report when there's a termination, if there's
5 any investigation going on and the circumstances involved in
6 that. And so we were doing the reporting when you terminated,
7 and then we're doing our own investigation as MMA.

8 Q. So to be clear, you knew about this; you knew MMAS
9 Securities considered these their clients and they were going
10 to report that as such to --

11 A. I did not know that. I knew that MMA -- because your
12 license was with MMA Securities, MMA Securities has to release
13 your license and we had to give a form to allow that to happen.

14 Q. So they have -- you have to file a form. Do they have to
15 say, This person is under internal review, which would mean
16 MMAS, for company property clients which are MMAS. It can only
17 be specific to MMAS if they are filing with FINRA.

18 A. No, I don't have any knowledge of that.

19 Q. Well, we do. We see it right here: Intentional removal of
20 company property is client contact information.

21 A. I don't know that that is solely MMAS.

22 Q. Jeff, is it your position that MMAS might have been
23 reporting to FINRA on actions that were not covered by FINRA?

24 A. I had no knowledge of that, Rick.

25 Q. Sounds like that you said that these actions that MMAS is

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Calder - cross

1 reporting to FINRA might not even have been attributable to
2 MMAS clients.

3 A. I don't believe I said that at all.

4 Q. Okay. So let's clarify.

5 When MMAS reported to FINRA that I was under
6 investigation for intentional removal of company property, such
7 as client contact information, also solicitation, institutional
8 clients and prospective clients while licensed with MMA
9 Securities on behalf of affiliated third party before
10 termination, were they talking about MMAS clients or were they
11 talking about MMA clients?

12 A. From my point of view, they are talking about our clients,
13 MMA. From their point of view, they are talking about the
14 broker-dealer clients.

15 Q. Jeff, with all due respect, you think FINRA cares about
16 your point of view?

17 THE COURT: Well, we don't --

18 MR. FERGUSON: Sorry.

19 THE COURT: As I said, right, just ask the question.
20 I understand the issues.

21 Next question.

22 MR. FERGUSON: I apologize, Judge.

23 THE COURT: This is not like television. Well, at
24 least not this part.

25 MR. FERGUSON: I see where it gets that way.

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Calder - cross

1 THE COURT: No, no, look, I understand. And, look --
2 but, you know, there's a difference between, you know, having
3 me sit here and having a jury. So I understand what the point
4 is. So go ahead.

5 BY MR. FERGUSON:

6 Q. Okay. Jeff, do you see -- and I apologize go back and
7 forth a little between these two.

8 On -- if you go back to page -- or Tab 8, and I'm
9 going to read something there again. I want to reread what
10 FINRA said they were investigating.

11 So when MMAS first gave this disclosure and FINRA
12 reached out to me: Intentional removal of company property,
13 including deletion of company data.

14 If we go back to Tab 7, No. 3 again: Describe the
15 nature of the internal review. Where does it show, where does
16 it state "including deletion of company data"?

17 A. I don't see it.

18 Q. So MMAS removed that, didn't they?

19 A. I don't know.

20 MR. WICKHAM: Objection. Foundation.

21 THE COURT: That's fine. I'll take the answer.

22 Go ahead, Mr. Ferguson.

23 BY MR. FERGUSON:

24 Q. Jeff, on that Tab 7, go to the next page, we see under Item
25 4: Is the internal review pending? No. Correct?

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Calder - cross

1 A. Yes.

2 Q. And we see under 5A, the date the internal review
3 concluded, 4/19/2019; correct?

4 A. Yes.

5 Q. And then under B, MMA Securities states: Although
6 Mr. Ferguson removed client contact information, his activities
7 did not result in selling away.

8 A. I see that.

9 Q. So MMA Securities did a thorough review for over a month.
10 But does it appear to you like they didn't report anything to
11 FINRA after that?

12 A. I don't know.

13 Q. Do you see any further actions?

14 A. I see no further action in this exhibit.

15 Q. So from what we see here, MMA Securities did a review, took
16 over a month. And isn't it true that then they told FINRA:
17 Although Mr. Ferguson removed client contact information, his
18 activities did not result in selling away?

19 A. I believe there has been supplemental information that has
20 been given to FINRA since this document.

21 THE COURT: Just to be clear, what is your
22 understanding of what "selling away" means?

23 THE WITNESS: Selling away, from my understanding in
24 the securities point of view, is while you're employed by one
25 firm, you're actually selling products --

JA2VMARHredacted

Calder - cross

1 THE COURT: For another firm.

2 THE WITNESS: -- for another firm.

3 THE COURT: Okay. All right.

4 BY MR. FERGUSON:

5 Q. So, Jeff, you just made a statement. Did MMAS has since
6 instructed MMA or did MMAS do it directly themselves, more
7 complaints to FINRA?

8 A. No, I don't believe so.

9 Q. I guess I'm confused. A moment ago you said to your
10 knowledge more things have been submitted to FINRA?

11 A. I don't know that it had been submitted to FINRA. We have
12 more information now than we did when this file was closed.
13 And I think that they will submit that to FINRA.

14 Q. When you say "we," do you mean MMA or MMA Securities?

15 A. I think we are both in possession of the information.

16 Q. But MMA feels MMA Securities should submit this to FINRA,
17 whatever this new information --

18 A. I don't know. They will do with it what they need to.

19 Q. Why would MMA even bring MMA Securities into it then?

20 A. MMA Securities has been a part -- we're running a dual
21 action here. They are getting the same discovery we are
22 getting.

23 Q. So MMA Securities and MMA have worked together to file the
24 same complaints with FINRA and in civil court?

25 A. Yes.

JA2VMARHredacted

Calder - cross

1 Q. So if they do file more claims, would it be MMA Securities
2 filing on their clients or would it be MMA filing on their
3 clients?

4 A. I don't know.

5 THE COURT: Mr. Calder, do you know, does Mr. Peartree
6 hold a position at -- a title with MMA Securities?

7 THE WITNESS: I don't know for sure whether he does.
8 I know he has a national title of some sort. I think he might,
9 but I can't say for certain.

10 THE COURT: Okay.

11 Go ahead, Mr. Ferguson.

12 BY MR. FERGUSON:

13 Q. So, Jeff, would you agree thus far we've determined for MMA
14 Securities, I had a separate supervisor, I had a separate
15 client database, separate clients that perhaps maybe MMA did
16 have other lines of business with them, and MMA Securities is
17 positioning this to FINRA, that they own these clients and
18 information?

19 A. That is such a compound question. I have a hard time just
20 answering that. So if you could break it down a little bit,
21 that would be easier.

22 THE COURT: In other words, Mr. Ferguson, there are
23 multiple questions in there.

24 MR. FERGUSON: I understand, your Honor.

25 Q. So we've determined that I had a different supervisor for

JA2VMARHredacted

Calder - cross

1 MMAS; correct?

2 A. Yes.

3 Q. We've determined that MMAS had their own very thick
4 policies and procedures manual of how they run their
5 corporation and entity; correct?

6 A. Yes.

7 Q. We've determined that all of my clients that I worked with
8 were -- all had agreements under MMAS; correct?

9 A. I don't know that we've determined that all of your clients
10 do. I would assume they would.

11 Q. We have determined that MMA cannot have securities --
12 contracts with securities clients because they are not a
13 registered broker-dealer; correct?

14 A. I don't know the legality of that.

15 Q. Is it possible that MMA has been acting as an unregistered
16 broker-dealer this entire time?

17 A. I don't think so.

18 Q. Have we now determined, separate from what MMA is doing,
19 MMAS is positioning with FINRA, these are our clients and they
20 want to file complaints on me?

21 MR. WICKHAM: Objection. Foundation.

22 THE COURT: Well, is it your understanding that MMAS
23 has filed various things with FINRA?

24 THE WITNESS: Yes.

25 THE COURT: Is it your understanding that -- so Tab 7,

JA2VMARHredacted

Calder - cross

1 which is the disclosure of occurrence composite, do you have an
2 understanding of whether FINRA has an ongoing investigation or
3 not?

4 THE WITNESS: I don't know.

5 THE COURT: Okay. Do you have an understanding of
6 whether there's an intention by MMAS to supplement the
7 information that it previously provided to FINRA?

8 THE WITNESS: I believe there is.

9 THE COURT: Okay.

10 And that was the information you were referring to
11 that has been developed since the -- I guess it's May 30th, it
12 appears, at the top left corner of this document of Exhibit 7.

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 What's the basis of your understanding? And again, I
16 don't want to -- if it's purely through counsel, then I don't
17 necessarily need to know that. But if you had conversations --

18 THE WITNESS: I have not had internal conversations,
19 so it's been through counsel.

20 THE COURT: Okay.

21 All right. Go ahead.

22 BY MR. FERGUSON:

23 Q. Can you please turn to Tab 9. Do you see there on the
24 first page, you say: Regulatory Notice 16-25, Forum Selection
25 provisions. Down at the bottom you see FINRA. So this is from

JA2VMARHredacted

Calder - cross

1 FINRA.

2 A. Yes.

3 Q. Can you go to page 6 please. Do you see where it says:
4 Associated Person Disputes. FINRA is also concerned that
5 member firms are including in predispute agreements with
6 associated persons provisions that have the effect of waiving
7 the associated person's right to obtain FINRA arbitration of
8 any disputes arising out of the agreement.

9 I'll jump down to the next paragraph.

10 FINRA Rule 13200 of the Code of Arbitration Procedure
11 for Industry Disputes, industry code, titled "Required
12 Arbitration," provides that member firms and associated persons
13 must arbitrate certain of their disputes as follows:

14 A, generally. Except as otherwise provided in the
15 code, a dispute must be arbitrated under the code if the
16 dispute arises out of the business activities of a member or an
17 associated person and is between or among members, members and
18 associated persons, or associated persons.

19 A. I see that.

20 Q. Do you understand that MMA Securities is a member firm?

21 A. Yes.

22 Q. Do you understand that I am an associated person?

23 A. I didn't know that.

24 Q. Do you understand that people who are registered --
25 securities registered with FINRA are registered with FINRA?

JA2VMARHredacted

Calder - cross

1 A. Who are registered with FINRA are registered with FINRA?

2 Q. Oh, I see. You don't understand that an associated person
3 means a person registered with FINRA; correct?

4 A. Right.

5 Q. Sorry, I was confused there.

6 Well, if they were, doesn't it appear that this
7 official declaration by FINRA is saying, If there's any dispute
8 between a member firm and MMAS and myself, an associated
9 person, it must go through FINRA arbitration?

10 A. Yes.

11 Q. And we just saw that MMA Securities is taking the
12 position -- has already taken the position, these are their
13 clients. And we just saw earlier that the client agreement is
14 between MMAS and that client; correct?

15 MR. WICKHAM: Objection. Foundation.

16 Mischaracterized the evidence.

17 THE COURT: I'll allow it. Objection overruled.

18 You can answer the question, if you can.

19 THE WITNESS: Can I have him ask me again please?

20 MR. FERGUSON: I don't know if I can.

21 THE COURT: And we just saw that MMA Securities has
22 already taken the position these are their clients, and we just
23 saw earlier that the client agreement is between MMAS and that
24 client; correct?

25 THE WITNESS: I don't know that they've taken the

JA2VMARHredacted

Calder - cross

1 position that these are their clients solely. I know that they
2 are investigating the action, as are we.

3 We feel as if we have a separate action for
4 downloading, for using, for taking our intellectual property,
5 confidential information, and using it.

6 BY MR. FERGUSON:

7 Q. Did I do commercial insurance business?

8 A. No.

9 Q. Did I do health and welfare business?

10 A. No.

11 Q. Did I do compensation consulting?

12 A. No.

13 Q. Did I do any line of business under MMA that wasn't
14 specifically first under MMAS?

15 A. You are paid by MMA partially to do the securities side of
16 the business and partially to service the clients.

17 Q. Jeff, that's not what I asked.

18 Did I do any line of business, work on anything that
19 wasn't under MMA Securities?

20 A. No, I don't think you did, no.

21 Q. So 100 percent of the clients that we're talking about
22 today are first under MMA Securities. They may have some other
23 line of business, some other relationship with MMA; correct?

24 A. Yes.

25 Q. Does that sound like a separation to you?

JA2VMARHredacted

Calder - cross

1 A. No, I consider them our clients.

2 Q. And I'm just going to clarify there, so for the record
3 you're stating, when you say they're our clients, that you, as
4 an unregistered person, managing director for MMA, consider
5 these security clients your clients?

6 MR. WICKHAM: Objection.

7 Calls for a legal conclusion.

8 THE COURT: I understand the question.

9 The clients that are at issue -- well, I'll allow it,
10 whether -- putting aside the legality of the situation, is it
11 your personal view that the clients that are at issue here are
12 MMA clients?

13 THE WITNESS: Yeah, absolutely. They were either
14 referred in by a current MMA producer, or the business that
15 Rick brought in through his own efforts, we supported that, we
16 paid for that, we paid for those activities; we paid for all of
17 the travel, all the entertainment; we paid for the service
18 staff to service those clients. MMA paid for that.

19 THE COURT: Okay. Go ahead, Mr. Ferguson.

20 BY MR. FERGUSON:

21 Q. Jeff, to what you just said there, I think earlier you said
22 you spent about [REDACTED], roundabout, I don't know the exact
23 number --

24 THE COURT: I think it was 21.

25 Q. 21,000 on my travel; correct?

JA2VMARHredacted

Calder - cross

1 A. Not just travel; hotel, travel, entertainment.

2 Q. How much did my book of business bring in via MMA
3 Securities?

4 A. I'm not sure of the total amount.

5 Q. Can we agree it was somewhere north of 600,000?

6 A. I don't know that I can agree to that.

7 Q. Can you say approximately?

8 A. I don't know what your book of business is.

9 Q. Was it over 400,000?

10 A. I don't know.

11 THE COURT: Was that -- there was an exhibit --

12 THE WITNESS: No, the exhibit just shows the clients
13 that are at risk.

14 THE COURT: At risk. Okay. So --

15 THE WITNESS: So there's 250,000.

16 THE COURT: Yes, 248,411.

17 THE WITNESS: Yeah. So assuming the book of business
18 was -- let's say it's \$500,000, and I'm not saying it was or it
19 wasn't, but let's say it was. We would budget approximately
20 two percent of that revenue towards expenses. So a \$500,000
21 book of business should have approximately a budget of two
22 percent of that, which is \$10,000.

23 THE COURT: Does that flow through in any way in MMA
24 Securities?

25 THE WITNESS: No.

JA2VMARHredacted

Calder - cross

1 THE COURT: Does MMA Securities have its own budget
2 for that sort of expense; or basically MMA Securities is set
3 up, because it's a requirement and various folks and clients
4 sign contracts with MMA Securities, but the money and the
5 funding comes from MMA?

6 THE WITNESS: The money and the funding comes from
7 MMA.

8 THE COURT: Okay. And there's no flow -- in other
9 words, the money, as I understand it, comes back to MMA, though
10 does flow through MMAS.

11 THE WITNESS: Does flow.

12 THE COURT: Okay.

13 Does MMAS itself have employees?

14 THE WITNESS: I believe it does.

15 THE COURT: Okay.

16 THE WITNESS: But not very many.

17 THE COURT: All right.

18 This is, I think, a question -- and Mr. Wickham, it
19 may be already in the papers, but are there cases that have
20 been cited to me or that you're aware of or that you can
21 provide to me where there are, in essence -- understanding and
22 assuming that there's going to be another filing with FINRA,
23 where there is -- at the same time there is a litigation, there
24 is also a FINRA arbitration involving similar accusations?

25 MR. WICKHAM: None of the cases that we encountered

JA2VMARHredacted

Calder - cross

1 had that factual circumstance. But, again, this is not a
2 situation where there is a separate FINRA arbitration. Again,
3 when Mr. Ferguson left and they --

4 THE COURT: And I apologize, that was my -- that was
5 my inartful way of saying it. But --

6 MR. WICKHAM: They were required to disclose this.
7 They were required to file the U-5. They were required to put
8 into the U-5, you know, certain information.

9 There have been multiple occasions when FINRA has come
10 back to MMAS, and I'm assuming probably back to Mr. Ferguson as
11 well, asking for supplemental information. It's a FINRA
12 investigation. MMAS had to make what disclosures that it had
13 to make.

14 THE COURT: Sure.

15 MR. WICKHAM: The characterizations of that, based on
16 an absence of a full record, are not accurate. I don't want to
17 get into -- but I will say that pleadings from this case, the
18 complaint, various other things, have been submitted to FINRA.

19 So the full character and nature of everything that is
20 going on here has been shared with FINRA as part of their
21 investigation.

22 THE COURT: Okay.

23 MR. WICKHAM: But with regard to the specific
24 situation of a nonFINRA member pursuing claims against someone
25 who is a hybrid, who has one leg in the FINRA world and another

JA2VMARHredacted

Calder - cross

1 in the other world, the answer is yes. We cite to *Ayco Company*
2 *LP v. Frisch*. It's cited on page 15 of our motion to dismiss
3 brief, opposition brief.

4 THE COURT: Opposition brief.

5 MR. WICKHAM: Then that case then talks about the lead
6 Southern District case, again, when you have a nonFINRA member
7 who was pursuing these claims and all the arguments that were
8 raised in this and all that.

9 THE COURT: Okay.

10 MR. WICKHAM: So all that's laid out.

11 It goes into the U-4 form. U-4 only is limited to the
12 things that Mr. Ferguson was quoting: Members, between member
13 firms, and all that. And that, you know, MMA doesn't fall into
14 any of those categories, so it's a nonsignatory and so on and
15 so forth.

16 But, again, there's no separate FINRA arbitration
17 here. This is FINRA conducting an investigation based on MMAS
18 having submitted a required disclosure.

19 The reference to selling away isn't some sort of an
20 exoneration of Mr. Ferguson; it's a clarification that what had
21 been perceived as a potential issue, that at least at that time
22 MMAS had made a determination that that particular activity,
23 selling away -- which is a cardinal sin, I guess, in that
24 world -- that the firm at that time had determined that that
25 particular thing hadn't occurred. But that wasn't by way of

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Calder - cross

1 saying that, you know, everything else that they were saying
2 wasn't accurate.

3 THE COURT: And I understand that that's a term of art
4 specifically in this area.

5 Let me ask, is there a dispute with regard -- because
6 I think the U-4 that Mr. Ferguson referred to earlier was one
7 that was from an earlier -- I don't know how frequently those
8 have to be -- in other words, is there a U-4 --

9 MR. WICKHAM: There would be a U-4 between
10 Mr. Ferguson and MMAS that is available on FINRA's website.

11 THE COURT: All right. That's the only thing. So
12 there's no dispute with regard to that.

13 MR. WICKHAM: Right.

14 This just goes to whether a nonsignatory is bound by
15 the U-4. And we make our arguments, and Mr. Ferguson's prior
16 counsel made their arguments.

17 THE COURT: Okay.

18 Go ahead, Mr. Ferguson.

19 MR. FERGUSON: Your Honor, I disagree with the
20 counsellor's position on this.

21 He's saying -- he stated that MMAS was required to
22 disclose this. No, MMAS is required to file a U-4 saying I've
23 left the company. That's it. They chose to state I was under
24 investigation for these things. That's not a requirement. And
25 by doing that, they stated they were investigating under their

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Calder - cross

1 own clients. Securities clients are not in the business of
2 investigating other companies. FINRA is not in the business of
3 investigating nonFINRA, nonregistered entities.

4 THE COURT: And I don't need to get into the
5 legalities of what would be required by FINRA or not required,
6 but there may have been a concern had they not disclosed it,
7 and you go on to another entity where you're taking on
8 fiduciary responsibilities, that somehow they might be tagged
9 for it. I don't know. And I don't know, if that was the case,
10 why they decided it had to be reported. But what I am is that
11 it's been reported, and it may -- there may be additional
12 information, as I understand, that may get reported.

13 And so what I need to sort out is whether that's --
14 whether that impacts in any way what's going to happen, what's
15 happening here. In other words, whether I say, Well, that
16 means the whole everything should go to FINRA arbitration or
17 whether -- and again, reviewing the case law, whether basically
18 this proceeding can proceed, and whatever FINRA's investigation
19 is, they do.

20 I take it -- well, let me ask it. I'm not sure I got,
21 Mr. Wickham, your response to this: Are you representing the
22 company in connection with the FINRA part of this or is that
23 another counsel, or is that internal?

24 MR. WICKHAM: None of the above. It's through MMAS's
25 compliance officer. And she is responding to what inquiries

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Calder - cross

1 that FINRA has had.

2 Necessarily they will be consulting with counsel
3 concerning drafting of responses to be able to be sure that
4 everything that's submitted to FINRA is accurate and at least
5 with regard to the circumstances about the claims asserted in
6 this case. So we have been consulted on those matters, but it
7 is MMAS's chief compliance officer who was interfacing with
8 FINRA in connection with FINRA's investigation.

9 THE COURT: And I take it, since I haven't seen
10 anything with regard to this, that basically FINRA is doing
11 their investigation, and they have not taken any position with
12 regard to whether -- to the extent that there is -- since they
13 have gotten the documents that something has been filed here,
14 haven't taken the position, Well, this should be a FINRA
15 arbitration and shouldn't be in court.

16 MR. WICKHAM: That is correct. FINRA has not taken
17 any position on that subject.

18 THE COURT: Okay.

19 MR. FERGUSON: Your Honor, on that, I would just like
20 to note that the other misrepresentation there, the case
21 quoted, as counsellor said, was a case where somebody had one
22 leg in both pools. We've already established I had both legs
23 in one pool and one pool only. I only do securities work. The
24 case is not applicable.

25 THE COURT: Well, I understand that's the argument and

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Calder - cross

1 that's what I have to decide.

2 Go ahead.

3 BY MR. FERGUSON:

4 Q. Jeff, on that same page, do you see down there at the
5 bottom, bottom paragraph, second sentence: FINRA Rule 13200
6 specifically states that industry disputes must be arbitrated
7 at FINRA, except as otherwise provided in the industry code.
8 Thus, any attempt to override this requirement of FINRA Rule
9 13200 and a predispute agreement by more specific contractual
10 terms would violate FINRA rules.

11 A. I see that.

12 Q. Do you understand that the predispute agreement by more
13 specific contractual terms is a reference to a nonsolicitation,
14 noncompete-type agreement?

15 A. I'm not aware of that.

16 Q. Could it be?

17 A. I don't know.

18 THE COURT: And I apologize for this question because
19 I probably should know the answer, but, Mr. Ferguson, could
20 you -- in connection with the current suit, could you have
21 initiated an arbitration with FINRA, in other words, as a
22 member?

23 MR. FERGUSON: I can making my own complaints.

24 THE COURT: Okay. And have you done that?

25 MR. FERGUSON: No. I was holding off in good faith.

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Calder - cross

1 THE COURT: All right.

2 Well, it's just a question. I don't need to know
3 necessarily why one way or the other, but okay.

4 Go ahead. Next question.

5 And do you have a sense of how much longer you may
6 have?

7 MR. FERGUSON: Quite a ways.

8 THE COURT: Okay. By "quite a ways," let me just ask,
9 do you intend to ask about all of the exhibits that you have in
10 your binder?

11 MR. FERGUSON: Not all of them. About half.

12 THE COURT: Okay.

13 MR. FERGUSON: Maybe a few more. I can try to speed
14 it up.

15 THE COURT: I appreciate that, but, again, obviously,
16 as I did with Mr. Wickham, I'll allow you to do what you need
17 to do.

18 I'm principally thinking about the time that I have
19 allotted in connection with this. So do you think you'd go
20 more than an hour? Do you have more than an hour?

21 MR. FERGUSON: I mean I do, but I'll go quick.

22 THE COURT: Because we still have to have your
23 testimony.

24 Why don't we do this: Let's take a five-minute break
25 right now, because I'd like to speak with my staff, because it

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Calder - cross

1 doesn't -- even under the best of circumstances, we still need
2 to hear from you and have cross-examination.

3 And I apologize, I'd forgotten, do you have a witness
4 here also or don't?

5 MR. FERGUSON: No.

6 THE COURT: Okay.

7 So we'd have to still have you go. And there's no
8 conceivable way that that's going to happen today.
9 Unfortunately, not that we will even go this long, but I have a
10 meeting I have at 6:30.

11 So let me just speak to my staff about timing, and see
12 what's going to be possible, and then have just a logistical
13 conversation with counsel.

14 So we're going to take -- why don't we take -- why
15 don't we say ten minutes, it's until ten of five. I'm giving a
16 little bit longer than ten minutes. And we'll come back and
17 continue the cross-examination.

18 Obviously, Mr. Wickham, the witness is on
19 cross-examination, so I'd ask that you not have substantive
20 conversations about the cross-examination with Mr. Calder
21 during the break.

22 MR. WICKHAM: Of course, your Honor.

23 THE COURT: Okay?

24 All right. Thank you very much.

25 We'll stand adjourned.

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Calder - cross

1 (Recess)

2 THE COURT: So this is what I think we can do. We can
3 go until about -- well, let me ask -- off the record for a
4 second.

5 (Off record)

6 THE COURT: So we would go until 6 o'clock. But
7 obviously, Mr. Ferguson, if you finish Mr. Calder before then,
8 we'll take a break at that point and come back for you
9 tomorrow. Okay?

10 MR. FERGUSON: I understand. I'm marking up pages.

11 THE COURT: All right.

12 And so we can start tomorrow -- would 9:30 or 10 work
13 for the parties?

14 MR. WICKHAM: Either is fine with us, your Honor.

15 THE COURT: Mr. Ferguson?

16 MR. FERGUSON: Yes, your Honor, any time is fine.

17 THE COURT: So we'd start tomorrow at 9:30. We'd be
18 able to go until about 11 or so. I have some initial pretrial
19 conferences which will take maybe 10 minutes or 15 minutes.
20 We'll be able to go until about 1 or so. So I'm hoping -- 1 or
21 maybe a little bit later. I would have to miss an internal
22 meeting. But I don't know how long either the direct will be.

23 What I would say, Mr. Ferguson, if there are things
24 you want to -- points you want to make on direct that are
25 already in your affidavit, you should feel free to just point

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Calder - cross

1 me to those things so we don't necessarily have -- you may get
2 asked about them on cross-examination. But just so that we
3 don't, sort of, retread things you've already raised, unless
4 you think there's stuff you want to add, obviously I'm not
5 precluding you from doing that.

6 MR. FERGUSON: I think I understand, your Honor.

7 THE COURT: Okay.

8 Yes.

9 MR. WICKHAM: Two questions, one housekeeping.

10 THE COURT: Yes.

11 MR. WICKHAM: For this evening, can we leave our boxes
12 here, your Honor?

13 THE COURT: I think it's probably best if you leave
14 them in the witness room.

15 MR. WICKHAM: Okay.

16 THE COURT: And you just put a note on top of them
17 saying, you know, "Ongoing hearing. Do not throw away." Just
18 because there are folks who do come in and do cleaning. And
19 although I haven't had it happen here in the courtroom, in my
20 chambers there was some stuff that at one point got thrown --
21 just courtesy copies, nothing -- but it created a little bit of
22 havoc.

23 MR. WICKHAM: The other question is bringing our
24 luggage to the courtroom, would that be permissible?

25 THE COURT: Sure. That's fine. You're going to have

JA2VMARHredacted

Calder - cross

1 to go through security.

2 MR. WICKHAM: Right.

3 THE COURT: If there's an issue with regard to that,
4 just let me know and we can -- in other words, you're still
5 going to have to go through security with that.

6 MR. WICKHAM: Right.

7 THE COURT: And you can leave them -- you can either
8 leave them parked somewhere in the back or you can leave them
9 in the witness room.

10 MR. WICKHAM: If possible that we could reach a
11 conclusion -- and we'll do whatever the Court needs, wants, or
12 desires, but if we could be able to reach a conclusion so that
13 we would be able to make flights out at 4 or 5 tomorrow --

14 THE COURT: I fully anticipate -- because I've got two
15 pleas in a criminal matter that I have to do at about 2. And
16 unfortunately, there's going to be a bunch of folks coming in
17 for that, because there's a -- for whatever reason, there's an
18 interest, a press interest in it.

19 MR. FERGUSON: Your Honor, are people allowed to
20 attend something like that?

21 THE COURT: Yes. The courtroom is open. So with
22 regard to pleas, unless there's a request by the government on
23 a criminal case for the matter to be sealed, yes, it's a public
24 forum. And tourists come in from various parts of the world to
25 watch proceedings.

JA2VMARHredacted

Calder - cross

1 MR. WICKHAM: It's America.

2 THE COURT: So my intention is, yes, we need to get it
3 done tomorrow. Obviously if there's something that's still
4 hanging out, I think we need to get it done tomorrow.

5 MR. WICKHAM: I'll want to confer with my client this
6 evening, but I would even be willing to submit both motions on
7 the papers so that -- just in terms of what needs to be checked
8 off the box is that there wouldn't need to be oral argument on
9 the motions. I think that both parties have fully briefed the
10 relevant issues.

11 THE COURT: Okay. There may be -- I may have
12 additional requests to get some information from --

13 MR. WICKHAM: Yes.

14 THE COURT: -- some of the witnesses who aren't here,
15 but who have submitted declarations in the past. But we can
16 talk about that at the end.

17 MR. WICKHAM: Thank you, your Honor.

18 THE COURT: All right.

19 Mr. Ferguson, you may proceed.

20 MR. FERGUSON: Thank you, your Honor.

21 BY MR. FERGUSON:

22 Q. Jeff, can you please turn back to Tab 49.

23 Jeff, please stop me if I start going too fast.

24 THE COURT: I'm sorry, you said Tab 49?

25 MR. FERGUSON: 49.

JA2VMARHredacted

Calder - cross

1 THE COURT: Okay.

2 Q. So, Jeff, do you see the very first page there, "Download
3 Google Chrome"?

4 A. Yes.

5 Q. See the very bottom, it says [REDACTED],
6 and address and email?

7 A. I do.

8 Q. Do you agree [REDACTED] is one of the clients under
9 dispute today?

10 A. I do.

11 Q. And [REDACTED] is the main contact and decision-maker
12 there; correct?

13 A. I don't know.

14 Q. [REDACTED] email is there; correct?

15 A. Yes.

16 Q. And this is a Google search, Download Google Chrome.

17 Jeff, can you please turn to the next page, 5500
18 again. So do you see up towards the top, a single employer
19 plan? Do you see over to the right, where it shows this
20 client's business code, it shows their tax ID number, it shows
21 their telephone number. Down below there it says Ana Prince as
22 the main person for this plan.

23 A. I'm sorry, where are you looking at?

24 Q. It says freeERISA.com at the top, Form 5500?

25 A. Mm-hmm.

JA2VMARHredacted

Calder - cross

1 Q. Shows us the date this plan was started and the plan
2 number; correct?

3 A. Right.

4 Q. Shows us the name of plan, name of the company, address?

5 A. Yes.

6 Q. Go to the next page. See there on the left-hand side, that
7 table there, it shows all the employees; breaks down how many
8 are active, how many are participating in the plan, how many
9 are terminated, and quite a bit of other information about
10 participants; correct?

11 A. Yes.

12 Q. Do you see under 8a it shows the characteristic codes of
13 the instructions 2A, 2E, 2F, 2G, 2J, 2T, 3D, 3H?

14 A. I do.

15 Q. I don't know how to ask that question.

16 Do you know that these are plan design codes that say
17 whether it's a 401(k) plan, profit sharing, auto enroll?

18 A. I do not.

19 Q. Okay.

20 Down below there we have other information about the
21 plan, retirement plan information.

22 Do you see on the next page, Schedule A?

23 A. Yes.

24 Q. We already looked at this earlier. Not only does it show
25 the amount that SagePoint is making, six inches down, John

JA2VMARHredacted

Calder - cross

1 Hancock; then down below SagePoint, it shows Lebenson
2 Actuarial, and it shows --

3 THE COURT: Go ahead.

4 Q. And the next one is Lebenson, L-E-B-E-N-S-O-N?

5 A. Yes.

6 Q. Actuarial Services.

7 A. Yes.

8 Q. And we can see how much each of these are making.

9 Continuing to the next page, we have a whole list of
10 financial information, don't we?

11 Do you see where it shows how much money is being
12 added to the plan, from what different sources? About halfway
13 down we see the experience of related contracts.

14 Do you see on the next page, Schedule C, service
15 provider information? We can see there, about three-quarters
16 of the way down -- one-third of the way down, John Hancock life
17 Insurance. Then we see down below John Hancock's tax ID. Then
18 it gives a description of, again, how much they were making,
19 and it shows for what services, and it shows how that payment
20 was structured.

21 A. Yes.

22 Q. Skip over the next page. Go to Schedule D.

23 Do you see where it lists all the investments that are
24 in this plan and how much is in them?

25 A. Yes.

JA2VMARHredacted

Calder - cross

1 Q. Continue on to the next page and the following page.

2 If we go to the next page, Schedule H, financial
3 information. Do you see there this provides a breakdown of all
4 the assets in this plan, what type they are, the category they
5 are? It shows all the liabilities of this plan; it shows the
6 net assets; it shows the income, who it was received from,
7 participants or others.

8 Going on to the next page, do you see where it says:
9 Earnings on investments. It shows us the earnings. Then we
10 get into expenses, and it breaks out the expenses. And then
11 down below that we have compliance questions, where it's
12 talking about, Did you have any Part IV compliance questions.
13 4a, was there a failure to transmit any plan participant. So
14 it's asking them all kinds of detailed questions about the
15 compliance of the plan, their commercial insurance on the plan,
16 a Fidelity bond on the plan.

17 Then go to the next page, the compliance questions
18 continue, very detailed.

19 We go on to Schedule R on the next page, retirement
20 plan information. And I'm just going to skip over that.

21 Let's get into really quick, do you see where on the
22 next page we go into Metz & Associates do an audit of the
23 financial statements of the [REDACTED] 401(k) profit
24 sharing plan and trust.

25 Do you recognize this as an independent audit of the

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Calder - cross

1 [REDACTED] plan?

2 A. I have not seen an independent audit before.

3 Q. Okay. In the interest of time, I'm going to suffice to say
4 this is a lot of information about a retirement plan, isn't it?

5 A. Yes.

6 Q. And this is all publicly available off freeERISA; correct?

7 A. Yes.

8 Q. Client name, the assets, address, phone number, the person,
9 email. Isn't that just about everything that MMA has said that
10 I stole?

11 A. This is for one client information along those lines.

12 However, there was downloads of our -- downloads of
13 all of our clients, specific contacts for each person at that
14 client. This reflects one plan with one HR contact. Many of
15 the solicitations went out to our clients with multiple plan
16 contacts. I don't believe you'd find the multiple contacts in
17 any database, nor could you find a refined client list of MMA.

18 Q. So back to my original question: There's an awful lot of
19 information about retirement plans that's available right
20 online; correct?

21 A. I answered that, yes.

22 Q. Are you familiar with Regulation S-P?

23 A. I am not.

24 Q. Regulation S-P is a securities regulation, and it's about
25 the confidentiality of securities information. And securities

JA2VMARHredacted

Calder - cross

1 S-P is kind of the same thing as MMA's nonsolicitation
2 agreement. It says, Okay, you can't take information. It's
3 the financial securities version of it. This information,
4 proprietary, belongs to that company.

5 Are you familiar with broker protocol?

6 A. No.

7 Q. Broker protocol is -- it came about, and it's voluntary.
8 There are a few hundred broker-dealers that belong to it.

9 MR. WICKHAM: Judge --

10 THE COURT: Yes, I'll allow you to testify to this, if
11 it's relevant to your testimony. But unless it's preparatory
12 to a question that you have, you should just go to your next
13 question.

14 MR. FERGUSON: It is preparatory, your Honor.

15 I'm trying to position that securities registration
16 has Regulation S-P. Broker protocol specifically exempts
17 client name and basic contact information. All people who
18 belong to broker protocol are allowed to take basic
19 information. Regulation S-P specifically says for financial
20 companies, registered FINRA firms. Regulation S-P only applies
21 to natural people; it does not apply to retirement plans,
22 because what we've just seen.

23 THE COURT: But you can ask is he aware of those
24 things. In other words, are you -- go ahead and ask your
25 question.

JA2VMARHredacted

Calder - cross

1 MR. FERGUSON: That's what I was going to get to.

2 BY MR. FERGUSON:

3 Q. Are you aware that retirement plan information is exempt
4 from financial securities Regulation S-P, kind of the
5 confidentiality part?

6 A. I'm not aware of that.

7 Q. Can you go to Exhibit 11 please. Can you go to page 5 of
8 7, top right-hand corner.

9 Do you see there under "manager comments" -- and you
10 were my manager; correct?

11 A. Correct.

12 Q. The ethics part of this rating is one of Rick's real strong
13 points. Do you see that?

14 A. I do.

15 Q. Can you go to Exhibit 21.

16 This is a letter that was sent by MMA's attorney to my
17 then attorney at the time, Jamie Dupree.

18 Do you see on page 3, upper left-hand corner, second
19 paragraph down, about halfway through that paragraph: MMA
20 sought to transition the sales and advisory duties of clients
21 who were nominally assigned to Mr. Ferguson to Mr. Stephens.
22 But Mr. Ferguson would continue in his client service roles for
23 those plans. Do you see that?

24 A. I see that.

25 Q. Can you turn to Exhibit 25.

JA2VMARHredacted

Calder - cross

1 A. Yup.

2 Q. I apologize. Exhibit -- I mislabeled an exhibit. Exhibit
3 27, my apologies.

4 A. Okay.

5 Q. This is an email between myself, Kim Blackmore is on there,
6 Mariane Liebowitz, who is the chief compliance officer, MMA
7 Securities.

8 Do you see down below, my email to her:

9 Hi, Mariane. I need clarification on something. In
10 all the documents we've had around transferring my book of
11 business from SagePoint to MMA, I was told my book was
12 transferring to MMA, just like Bill and Ryan's, in my name.

13 First time I saw "house account" mentioned, I reached
14 out via email to inquire and make sure all my accounts were
15 still under my name for book and commissions. And everyone
16 involved promised that my book was still my book, under my
17 name, with all commissions coded to me.

18 I've been informed this week that I was lied to, and
19 that all my accounts were taken from me, coded as house
20 accounts so that someone else can get the benefit of the book I
21 built.

22 Do you see that?

23 A. I see it.

24 Q. Do you see the date of that is August 23rd?

25 A. I do.

JA2VMARHredacted

Calder - cross

1 Q. When was it started, the transfer of these clients, from
2 SagePoint to MMA Securities?

3 A. I think we determined it was midyear last year.

4 Q. That's when it happened; correct?

5 Wasn't it true that it was started in 2017, because it
6 took a long time of planning --

7 A. I don't know that.

8 Q. Can we agree that moving an entire retirement plan services
9 division from one broker-dealer to another is a considerable
10 project?

11 A. I don't know that.

12 THE COURT: Well, do you know -- do you have an
13 understanding of how much before August 23rd of 2018 the
14 process was started?

15 THE WITNESS: I do not.

16 THE COURT: Would that have been Mr. --

17 THE WITNESS: Peartree.

18 THE COURT: Mr. Peartree?

19 THE WITNESS: Yes.

20 THE COURT: Okay.

21 So do you recall the first time that you became aware
22 of the transferring, that the transferring was going to occur
23 from SagePoint to MMA Securities?

24 THE WITNESS: Yeah, some time last summer.

25 THE COURT: Okay.

JA2VMARHredacted

Calder - cross

1 Do you have an understanding of how long that had been
2 in the works?

3 THE WITNESS: I really don't. I know it had been
4 talked about for a while. I don't know how long the process
5 actually took.

6 THE COURT: And when you say "talked about for a
7 while," when was the first time you became aware that it was
8 being floated as a possibility?

9 THE WITNESS: Probably early in the year.

10 THE COURT: Early in 2018?

11 THE WITNESS: Yes.

12 THE COURT: And was it your sense when you heard about
13 it, that it had been something that others had been discussing
14 or had been percolating somewhere else within the company?

15 THE WITNESS: Mm-hmm.

16 THE COURT: That's a yes?

17 THE WITNESS: Yes. Sorry.

18 THE COURT: Okay. Go ahead, Mr. Ferguson.

19 THE WITNESS: I'd like to point something out --

20 THE COURT: Sure.

21 THE WITNESS: -- from this exhibit, if I could.

22 Rick is referring here under my name for book and for
23 commissions. Rick was not paid on a commission basis. Rick
24 was a salary plus a bonus. So the commissions were house
25 commissions; they were used to pay for all the services we

JA2VMARHredacted

Calder - cross

1 have. They were not attributable in any way to Rick's
2 compensation. His compensation was based on his competencies
3 and his salary that we agreed to, plus a new business bonus of
4 25 percent one time for anything he helped generate.

5 BY MR. FERGUSON:

6 Q. So to clarify your statement there -- and we're going to
7 talk about my commission a little bit more -- the income that
8 goes to MMA Securities, that's paid under -- was paid under my
9 name; correct?

10 A. I don't know that.

11 Q. Actually, I retract that. It was paid under a house
12 account. Okay.

13 But the income is paid from the client to MMA
14 Securities, who then repatriates it somehow over to MMA;
15 correct?

16 A. I think so.

17 Q. Can you go to Tab 22. This is an email sent out by Jake
18 Daly. This particular client is in there.

19 Action required: Quick admin item. The name of the
20 client.

21 This is the template letter that MMAS sent out to all
22 clients to tell them they were transferring from SagePoint
23 Financial to MMA Securities.

24 We see the first paragraph, about halfway through, it
25 kind of describes it: SagePoint Financial has been responsible

JA2VMARHredacted

Calder - cross

1 for compliance oversight, licensing and registration, fee and
2 commission collections.

3 Skipping a sentence. Rick is a registered investment
4 adviser with SagePoint Financial.

5 Down below, next paragraph: We're changing our
6 broker-dealer.

7 Second sentence: Rick's registration as a registered
8 investment adviser will change from SagePoint Financial to
9 MMAS.

10 Skip a sentence. There will be no notice to employees
11 required or any material impact to the plan or your
12 participants. This will only be administrative in nature.
13 Nothing about our team or the service you have come to expect
14 will be changing.

15 A. Yes, I see that.

16 Q. Where in this letter does it tell clients that their new
17 adviser will be Jeff Stephens?

18 A. This letter was written before that determination was made.

19 Q. We've kind of established, haven't we, that MMA was working
20 on Jeff Stephens for a while.

21 When did Jeff Stephens come on?

22 A. I don't recall.

23 Q. It was August 1st.

24 A. So like I said, this letter was before he came on.

25 Q. In the letter we saw earlier from MMA's attorney, it

JA2VMARHredacted

Calder - cross

1 declares: It was MMA's intent the entire time as part of this
2 transition to move my book to someone else. We'll just say
3 someone else; correct?

4 A. I don't know that.

5 Q. Go to Exhibit 20.

6 I want to stay here for just a second.

7 Does this letter give any indication at all to a
8 client that I will no longer be the investment adviser?

9 A. Gives no indication of that.

10 Q. So June 13, MMA was moving my book of business, along with
11 Bill's, along with Ryan's, removing all retirement securities
12 plans from SagePoint broker-dealer over to MMAS. But at this
13 time, your position is MMA had no clue that they were going to
14 remove me?

15 A. This is a snapshot at a point in time. Jeff Stephens did
16 not begin employment until a month and-a-half after this, if
17 your date is accurate. This -- business changes all the time.
18 This is an accurate assessment of the facts at that point in
19 time.

20 Q. So this letter, as you just stated, is accurate. I was
21 going to stay as the investment adviser.

22 Why were my accounts transferred to a house account,
23 from SagePoint to MMAS?

24 A. You were still going to be the adviser on the account.

25 Q. When did anybody talk to me about that?

JA2VMARHredacted

Calder - cross

1 A. I don't know that they did. Nothing changed in your role.

2 Q. Can you go to Exhibit 23.

3 This was email from Diane Rosen, the same chain we've
4 looked at before. First paragraph -- or second paragraph:

5 My email to you dated Monday, January 28, outlined and
6 confirmed that the email that clients received from MMAS
7 regarding the move from SagePoint to MMAS was factual in nature
8 and I do not find that the email was misleading.

9 A. Okay.

10 Q. The next page we see another part of her email:

11 I have concluded my research on this matter and have
12 had a number of conversations, as well as other communications,
13 with some of the parties involved. I have not found any
14 evidence relative to your continued allegations that MMA
15 clients have been lied to or that we have been less than
16 transparent with our clients. I have reviewed the emails, and
17 she goes on.

18 Next paragraph down, not the quote, but the next
19 paragraph: This is a true and accurate statement. The change
20 was, in fact, administrative. The team did not change. And
21 based on our recent conversations, you contend that you do, in
22 fact, continue to service these clients. Do you see that?

23 A. Yes.

24 Q. So MMA's position is that while I had this big book of
25 business that would pay out a lot of money, I said, No, I don't

JA2VMARHredacted

Calder - cross

1 want it. I want to just be service and give that money and all
2 those clients to someone else?

3 THE COURT: You're saying money and all those clients.
4 But what money were you getting -- what part of your
5 compensation was based upon -- and I apologize, I just --
6 because I think if I wait, I probably will forget.

7 What part of your compensation do you say was tagged
8 to the book of business that you had?

9 MR. FERGUSON: Your Honor, there's another agreement
10 we're going to get to.

11 THE COURT: Okay. All right.

12 If we're going to get there, go ahead. Go ahead.

13 BY MR. FERGUSON:

14 Q. Can you go to Tab 28. This is an email from me to
15 basically everyone in the operations and the compliance
16 department: Kim Blackmore, Philip Cloos, Bill Peartree.

17 Do you see where I state at the end of the first
18 paragraph -- I'll just read it.

19 Hey, a related topic. Can you please send me the
20 letter or verbiage you prepared for telling my affected clients
21 that Jeff Stephens is their new named fiduciary adviser and
22 whatever final forms are needed to complete this takeover. I
23 can start contacting clients this week.

24 Do you see the date on there is December 20th, 2018,
25 the date of our meeting?

JA2VMARHredacted

Calder - cross

1 A. Yes.

2 Q. What do you think I meant when I said, I can start
3 contacting clients this week?

4 MR. WICKHAM: Objection.

5 A. I think --

6 THE COURT: Well, do you have an understanding of what
7 Mr. Ferguson may have been referring to when he said, I can
8 start contacting clients this week?

9 THE WITNESS: In my view of this, we had asked Rick to
10 contact his clients and explain the transfer and introduce Jeff
11 Stephens as the new adviser.

12 THE COURT: Was that before the meeting -- you had had
13 that conversation before the meeting -- well, let me just
14 confirm.

15 THE WITNESS: That was part of the December 20th
16 conversation.

17 THE COURT: Okay. So this email was sent at 11:26.
18 Do you recall what time you had that meeting?

19 THE WITNESS: I don't.

20 THE COURT: Do you know one way or the other whether
21 this email was prior to or after --

22 THE WITNESS: I think I'm relatively certain it would
23 be after the meeting.

24 THE COURT: All right.

25 Go ahead, Mr. Ferguson.

JA2VMARHredacted

Calder - cross

1 BY MR. FERGUSON:

2 Q. Jeff, isn't it true we had the meeting from 10 to 11 on
3 December 20th?

4 A. I said I think it was before this email left, so --

5 Q. Do you see the second paragraph? Obviously I cannot stay
6 the named fiduciary adviser/registered investment adviser.

7 What do you think I meant by that?

8 MR. WICKHAM: Objection.

9 THE COURT: Well, do you have an understanding of --
10 well, do you have an understanding of what -- well, let me ask,
11 was it your understanding was -- was either MMA or MMA
12 Securities asking for Mr. Ferguson to remain the fiduciary
13 adviser on these accounts, even though Mr. Stephens was coming
14 in?

15 THE WITNESS: I don't think they were asking him to do
16 that.

17 THE COURT: Okay. All right.

18 Go ahead.

19 BY MR. FERGUSON:

20 Q. Jeff to that point, so can we go back to Item 23.

21 A. Tab 23?

22 Q. Or Tab 23.

23 So Diane Rosen's email again, on the second page
24 there: I have not found any evidence relative to your
25 continued allegations that clients had been lied to, that we've

JA2VMARHredacted

Calder - cross

1 been less than transparent. And she quotes: Effective July
2 1st, Rick's registration -- we've already read that.

3 So what was the date of this? This email exchange is
4 January.

5 So I guess I'm confused. In item 28, the email, I
6 told MMA and MMA Securities, obviously I cannot stay the named
7 fiduciary adviser. But Diane Rosen seems to be saying, Well, I
8 did my investigation, and you're still here, so good enough.
9 Is that correct?

10 MR. WICKHAM: Objection.

11 A. I don't read it that way. I think Diane Rosen investigated
12 the allegations that you made and concluded they were
13 unfounded.

14 Q. She said I don't see -- the allegations that the clients
15 have been lied to. So in that email that was sent to clients
16 that we just looked at a minute ago, specifically said I was
17 going to remain as the adviser.

18 A. It was a snapshot in time prior to us hiring Jeff Stephens.

19 Q. I sat in on the planning meetings for transferring the book
20 of business, and we started in 2017. I know Jake developed
21 that email around January 2018. I know all of this was set in
22 motion.

23 How can MMA's position be, We had no intention of
24 removing Rick as the adviser, when all the clients came over
25 with me removed as the adviser?

JA2VMARHredacted

Calder - cross

1 THE COURT: I'll sustain.

2 MR. WICKHAM: Thank you, your Honor.

3 THE COURT: Again, I'm not sure we established that
4 fact. In other words, the clients, as I understand it, when
5 they were eventually transitioned, the idea they would be
6 transitioned to Mr. Stephens.

7 Let me ask this, Mr. Calder: Did there come a time
8 when there were subsequent letters sent to clients telling them
9 that Mr. Stephens was going to be taking over?

10 THE WITNESS: We asked Rick to introduce Mr. Stephens
11 to each one of the clients. And those clients that elected to
12 stay over, yeah, they got notice.

13 THE COURT: But I guess the question is, right, there
14 had been the prior letter which said the team is not going to
15 change.

16 THE WITNESS: Right.

17 THE COURT: Was there a follow-up letter -- other than
18 a call that may have been made by Mr. Ferguson, are you aware
19 of a follow-up letter that said -- whether it referred to the
20 prior letter or not, but that said, you know, when you
21 transition or now that you're with MMS Securities -- I don't
22 know exactly what the timing is, but that your new account
23 manager, whatever the phrase would be, would be Mr. Stephens.

24 THE WITNESS: I don't know.

25 THE COURT: Okay.

JA2VMARHredacted

Calder - cross

1 Go ahead, Mr. Ferguson.

2 BY MR. FERGUSON:

3 Q. So, Jeff, we had a meeting, correct, on December 20th,
4 2018, that we've already established it was you, myself, Mara
5 was there in person, and Bill joined via conference call;
6 correct?

7 A. Yes.

8 Q. And did we discuss this situation at that time?

9 A. We did.

10 Q. Was I angry?

11 A. You were.

12 Q. Why was I angry, if I had been informed well in advance
13 that my clients were going to be taken from me?

14 A. I don't know.

15 THE COURT: The question would be at that time do you
16 recall Mr. Ferguson saying why he was angry?

17 THE WITNESS: Yes. He felt his book of business was
18 being, quote, stolen from him. The commissions were -- he
19 wasn't getting the commissions. He was very angry, very
20 excited.

21 My position there is he wasn't being paid by the book
22 of business.

23 THE COURT: In other words, he wasn't getting
24 commissions.

25 THE WITNESS: He's not getting commissions; he was not

JA2VMARHredacted

Calder - cross

1 a commissioned salesperson.

2 THE COURT: From your perspective -- well, who would
3 be responsible for determining Mr. Ferguson's compensation year
4 over year?

5 THE WITNESS: I would do that in connection with Bill
6 Peartree.

7 THE COURT: And in connection with that, would the
8 book of business be considered as part of Mr. Ferguson's
9 compensation?

10 THE WITNESS: Book of business is always a
11 consideration, as long as a book of business is growing and
12 taking on new accounts. But the dollar amount -- there's no
13 formula of a dollar amount of book of business means the salary
14 gets set here. Rick's salary was set on the basis of his
15 experience, his contribution to clients, and the service he was
16 performing for them.

17 THE COURT: But I guess the question I have is if --
18 do you know whether, as a legal matter, Mr. Ferguson could have
19 continued as the -- well, let me ask first as a practical
20 matter, if the business is going to be transferred to
21 Mr. Stephens, was it going to be Mr. Stephens who was then
22 responsible for providing the 401(k) meetings and doing those
23 things, or would it be -- could it be someone else at the
24 company?

25 THE WITNESS: It could be somebody else.

JA2VMARHredacted

Calder - cross

1 THE COURT: Okay.

2 And was that -- was that the plan with regard to
3 Mr. Ferguson? In other words --

4 THE WITNESS: The plan was to have Mr. Ferguson
5 continue in his service role and support Jeff with the clients.

6 THE COURT: So then Mr. -- from your perspective, was
7 it that the clients were being transferred on paper in order to
8 support Mr. Stephens' compensation, but otherwise the idea is
9 he wasn't really going to be involved with those --

10 THE WITNESS: No, he was going to be involved with
11 those accounts.

12 THE COURT: All right.

13 THE WITNESS: But we have a -- our service teams are
14 built typically with a producer at the top of the service team,
15 then we have a client service executive, we have client
16 managers, we have retirement analysts down in San Diego. They
17 all work on the team. The only person who's paid as a portion
18 of the commission is the salesperson.

19 Then we look at the size of the book of business that
20 the client people service, regardless of whether or not it's
21 coded to them, and they are paid proportionally for the size of
22 book of business that they service and the complexity of the
23 accounts and the service to the team and other factors.

24 THE COURT: Okay. And again, at this meeting on the
25 20th, was it the understanding from everybody who was at the

JA2VMARHredacted

Calder - cross

1 meeting that although Mr. Stephens was going to -- accounts
2 would be transferred to Mr. Stephens in his name, that
3 Mr. Ferguson -- putting aside whether or not -- let's say he's
4 not going to be the fiduciary, but that he would continue to
5 service those clients?

6 THE WITNESS: Yes.

7 THE COURT: Okay.

8 Go ahead, Mr. Ferguson.

9 BY MR. FERGUSON:

10 Q. Jeff, do I have a fiduciary duty to my clients?

11 A. I don't know.

12 Q. Do 401(k) investment advisers, to your knowledge, have any
13 kind of a duty to their clients?

14 A. I think all employees of MMC have duties to their clients.

15 Q. And I apologize, I specifically meant aren't all 401(k)
16 clients covered by ERISA?

17 A. Yes.

18 Q. Which includes a specific duty of the adviser, a fiduciary
19 duty.

20 A. I'm unaware of that.

21 Q. Just a moment ago you had said so the plan was that I would
22 stay on as the investment fiduciary adviser to these clients.

23 A. No, the plan was that you would stay on as a client service
24 executive. You made it very clear to us that you would not be
25 a fiduciary or an adviser to the clients.

JA2VMARHredacted

Calder - cross

1 Q. So I really wouldn't be doing anything. If I couldn't talk
2 about investments with these clients, which would be the
3 fiduciary duty, was I just going to get to sit around or what
4 was my duty going to be?

5 A. No, there's plenty to do. We have clients who need changes
6 to their plans, we have clients who need to evaluate different
7 third-party administrators, we have open enrollment meetings
8 that need to happen. There's never a shortage of client
9 service work in our business.

10 Q. And when was I told this?

11 A. I don't know. You signed an agreement to be a client
12 service executive.

13 Q. I'm sorry. When was I told that all the clients I had
14 built up under my book were going to be taken away and I was
15 going to be demoted to this other position?

16 A. You were not demoted, you were in a position that you
17 requested. You were given a raise. You were also given an
18 incentive bonus; it was increased at the last time that we did
19 that. This was not a demotion; this was merely a reaction to
20 your request.

21 Q. So just to clarify, under Item 28, when I stated to MMA and
22 MMAS, Obviously I cannot stay the named fiduciary adviser, MMA
23 and MMAS, their position is that I was going to stick around?

24 A. Absolutely.

25 Q. Can you go to Item 29 please.

JA2VMARHredacted

Calder - cross

1 Do you recognize this? This is an email I sent to
2 myself the same day at 1:15.

3 A. Okay.

4 Q. So these were the notes I took during our meeting, and then
5 I emailed them to myself after the meeting to memorialize them.
6 It doesn't mean that you agree with them; correct?

7 A. Yes, it's correct that I don't agree with them, yes.

8 Q. These are -- I sent this to myself. Obviously I'm taking
9 notes on our meeting.

10 A. Right.

11 THE COURT: Well, that's a question I actually have.

12 Did you take handwritten notes?

13 MR. FERGUSON: Yes, your Honor.

14 THE COURT: And have they been produced?

15 MR. FERGUSON: I didn't keep them. I put them in here
16 and trashed them.

17 THE COURT: Okay.

18 All right. Go ahead. Next question.

19 BY MR. FERGUSON:

20 Q. Do you see Item 4, right? I stated: Bill stated and
21 confirmed that he and others did business planning well prior
22 to the broker-dealer change that included knowingly preparing
23 paperwork for me and my clients to sign that was materially
24 different from the paperwork he and Ryan Stover and applicable
25 clients signed knowingly, telling me and my clients that the

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Calder - cross

1 paperwork for me and my clients was exactly the same as the
2 paperwork for he and Ryan Stover. And the intent from the
3 beginning was to remove me as the adviser from my clients.

4 A. Rick, what I know of this is that this is your point of
5 view.

6 Q. Correct. That's all I'm asking.

7 THE COURT: Well, let me ask you this: Ryan Stover, I
8 take it, was another person whose business -- book of business
9 was being moved from SagePoint to MMA Securities?

10 THE WITNESS: Yup.

11 THE COURT: Am I correct that Ryan Stover's book of
12 business wasn't being transferred over to Mr. Stephens, or was
13 it?

14 THE WITNESS: It was not. And Ryan Stover's a
15 producer. So his producer coding within SagePoint, he was
16 coded that revenue when he went over to MMA Securities, because
17 we paid producers based on the commission. So we had to track
18 them.

19 THE COURT: And then was there another person -- I
20 thought there was another -- was there another individual whose
21 business was also transferred? Was there -- I thought there
22 were two.

23 MR. FERGUSON: Bill Peartree, Ryan Stover, and myself.
24 We were the only three.

25 THE COURT: Okay. So Mr. Peartree had his own book of

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Calder - cross

1 business that was transferred over to MMA Securities; is that
2 correct?

3 THE WITNESS: That's correct.

4 THE COURT: And was Mr. Peartree, was he a producer?

5 THE WITNESS: He is.

6 THE COURT: Okay.

7 So was the plan because Mr. Ferguson was not a
8 producer, was that the reason why his book was transferred over
9 to Mr. Stephens, so that he could -- because he was going to, I
10 guess, be a producer and, therefore, there wouldn't be a need
11 to try and find his compensation somewhere else?

12 THE WITNESS: Correct.

13 THE COURT: Okay.

14 All right. Go ahead, Mr. Ferguson.

15 BY MR. FERGUSON:

16 Q. Jeff, do you see the next page on Item 10? And Jeff, the
17 only reason I'm pointing this out is to put my frame of mind
18 for you.

19 Do you see there, as I understood this meeting I
20 attend, we discussed that the final step is going back to
21 clients to tell them that Jake lied to them, and the paperwork
22 they signed actually removes me as the adviser, and then was
23 the intent all along. Jeff looked disgusted, Mara concerned.
24 Bill stated he would handle if I'm not willing to. His exact
25 words, craft a story so that the clients forget they were lied

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Calder - cross

1 to. Mara immediately stated that's not what Bill meant, danced
2 around it, and got Bill to restate his words, saying something
3 to the effect that clients were not lied to, and put this in
4 the proper perspective. Jeff C. was quiet.

5 MR. WICKHAM: Your Honor, you know, it sort of goes
6 beyond hearsay. I mean it's his rendition, his fanciful
7 rendition of this *ad hominem* attacks on multiple individuals.
8 It's getting a little bit over the top, your Honor.

9 THE COURT: This is what I'm going to say with regard
10 to this meeting; it's something I already planned on asking
11 for:

12 I'd like to get the notes of everybody who was
13 involved in this meeting. I'd like to get -- including emails
14 between those and among those folks after the meeting with
15 regard to what their discussion was and to the extent that they
16 are talking about what occurred at the meeting.

17 In particular, if they're handwritten notes, I'd like
18 to see those, in addition to any documentation, I would
19 imagine, that Ms. Crain, because she's HR, may have documented
20 this in more than one way. So I'd like to get that also.

21 And I'd like to get a declaration or affidavit from
22 Ms. Crain with regard to this meeting.

23 MR. WICKHAM: Happy to do so, your Honor.

24 THE COURT: And again, I'm not saying -- by asking for
25 it, I'm not saying that it materially will make a difference to

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Calder - cross

1 me one way or the other in terms of what I need to rule on.
2 I'm just trying to get a sense of what transpired at that
3 meeting and also to sort out credibility, quite frankly.

4 MR. FERGUSON: Your Honor, there is a point --

5 THE COURT: One second.

6 MR. WICKHAM: We did supply a declaration for
7 Ms. Rosen principally for the purpose of Mr. Ferguson being
8 admonished not to send client information to his personal email
9 accounts. His message later claims that he didn't and, in
10 fact, we know that his statement on that subject is untrue.

11 But it so happens that Ms. Rosen is MMA compliance, to
12 which Mr. Ferguson complained about this, using fairly colorful
13 language in his accusations of Mr. Calder and Mr. Peartree and
14 Ms. Crain; and that MMA compliance, having investigated his
15 assertions that are summarized in that summary of the December
16 20th meeting, and concluded that his assertions were unfounded.
17 So he has assertions, he submitted it to the correct place, MMA
18 compliance. MMA compliance investigated and determined that
19 they were unfounded.

20 So we'll happily, to the extent that they exist,
21 locate materials from Ms. Crain, from Mr. Peartree and
22 Mr. Calder, that talk about that meeting. It's just that it's
23 his accusations, his misinterpretation, and everything else.

24 THE COURT: I get that.

25 Sometimes there could be five people at a meeting, and

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Calder - cross

1 people take away from it different things. And so I'm not at
2 all saying -- and I don't know exactly -- I apologize, I have
3 not read Ms. Rosen's -- her declaration, and I don't think it
4 speaks necessarily to what she actually did in connection with
5 the investigation.

6 MR. WICKHAM: No, I don't think it details what she
7 did.

8 THE COURT: So I don't know one way or the other
9 whether she spoke to all the people who were at this particular
10 meeting. It may not have been relevant to her whether she
11 reviewed the notes of the folks who were at this particular
12 meeting, whether she interviewed the people, or whether it was
13 just literally reviewing emails. I don't know.

14 And again, I'm not in any way saying that once I get
15 this material, that it will be relevant to my consideration of
16 issues of confidentiality, issues relating to arbitration or
17 not arbitration, issues relating to what materials -- other
18 materials there are. But I'm just trying to close the loop in
19 my own mind. Because it did occur to me in part -- and again,
20 part of it is based upon what -- the assertions that
21 Mr. Ferguson has made in his interpretation of this meeting.
22 So I just want to get a sense of --

23 MR. WICKHAM: What I might suggest and what I don't
24 think has been asked yet is simply for Mr. Ferguson to ask
25 Mr. Calder, What was said at this meeting? So we don't have to

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Calder - cross

1 have Mr. Ferguson, sort of, rereading, you know, his *ad hominem*
2 attacks and simply have the witness who's here, who's prepared
3 to testify, and let him say what was said.

4 THE COURT: That's fine. Let me just ask, because am
5 I correct that in the affidavit you submitted, this meeting was
6 not part of the affidavit?

7 THE WITNESS: I don't think it was.

8 THE COURT: Okay. So what is your -- first of all,
9 how long -- do you recall about approximately how long the
10 meeting was?

11 THE WITNESS: It was less than an hour and more than a
12 half hour.

13 THE COURT: Okay. Who was the person who was in
14 charge -- who took the lead role?

15 THE WITNESS: Bill took the lead role on the phone.

16 THE COURT: Okay. And had he already -- he, you, and
17 Ms. Crain, had there already been a discussion prior to
18 Mr. Ferguson coming into the room?

19 THE WITNESS: There had. We wanted to discuss the
20 change in adviser. We knew Rick was upset by this. We wanted
21 to address the concerns and talk about how we're going to serve
22 the clients going forward and what we wanted to have happen
23 from our point of view.

24 THE COURT: Okay. And had there been, prior to the
25 meeting, talking points or anything like that, or an email

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Calder - cross

1 correspondence laying out that this is what -- where I think we
2 need to go during the meeting?

3 THE WITNESS: I don't specifically recall, but I don't
4 think so.

5 THE COURT: Okay.

6 And so how was it determined that -- was it just
7 hierarchal, in other words, that Mr. Peartree would take the
8 lead on this?

9 THE WITNESS: Yes.

10 THE COURT: Do you know whether Mr. Peartree had
11 communications with Ms. Crain outside of your presence, in
12 other words, where you weren't there, about this and how to
13 approach it?

14 THE WITNESS: I don't know that he did, but I would be
15 very surprised if he did.

16 THE COURT: Okay.

17 So was there any discussion or contemplation, as far
18 as you were concerned -- well, but wasn't this -- this was also
19 the final warning meeting, right?

20 THE WITNESS: That's a separate meeting.

21 THE COURT: So separate meeting on the same day.

22 THE WITNESS: I think it was the same day.

23 THE COURT: Okay. So when was the final warning
24 meeting.

25 THE WITNESS: I don't recall.

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Calder - cross

1 Was it the same day? Rick's answering the question.
2 It was the same day.

3 THE COURT: Okay.

4 Were you present during that meeting also?

5 THE WITNESS: I was.

6 THE COURT: Do you recall whether it was before or
7 after or do you not have a recollection?

8 THE WITNESS: I don't have a recollection.

9 MR. FERGUSON: That was the same meeting. The
10 original intent of the meeting was -- there's an email in there
11 somewhere. Jeff and Mara reached out to me, We want to discuss
12 this final letter. And I refused to sign the final letter
13 because it said, Well, you accused people of lying. And my
14 version, admittedly, is that, Hey, obviously you switched them
15 to a house account and nobody told me. I felt that meant I was
16 lied to. So we got into talking about this whole situation.

17 THE COURT: Okay. But when you say -- is it one of
18 your exhibits that -- in other words, setting up the meeting
19 that it was about the final warning?

20 MR. FERGUSON: Actually, there is -- if I can
21 continue, it's actually -- I just noticed it's in the next
22 exhibit.

23 THE COURT: Just say what exhibit --

24 MR. FERGUSON: Exhibit 30.

25 THE COURT: 30? Okay.

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Calder - cross

1 MR. FERGUSON: In the very last page, there's an email
2 from Mara Crain on January 3rd: Hello, Rick. As we discussed
3 on Thursday 12/20, I need a signed copy of the final warning
4 that Jeff Calder delivered to you during our meeting on that
5 day.

6 THE COURT: Okay. But this is -- I'm sorry. So
7 Exhibit 30 though, is it missing -- missing the top. In other
8 words, I don't know what the date is. In other words, your
9 email in response is January 3rd, but the top doesn't have --
10 and it would appear, at least in the version I have --

11 MR. FERGUSON: No, your Honor, the last page. Very
12 last page is from Mara Crain at 8:55 a.m. on January 3rd. And
13 that's where she's saying the intent of that meeting was that
14 Jeff brought this final warning.

15 THE COURT: Okay. But -- okay. So there wasn't --
16 this isn't an email in advance of that meeting saying, We
17 intend to discuss the final warning.

18 MR. FERGUSON: There is another one. I'll have to
19 look for it, your Honor.

20 THE COURT: That's all right.

21 Okay. I'm sorry.

22 So you were saying about Mr. Calder -- so do you
23 recall -- do you have a recollection that the meetings were --
24 the final warning meeting and the discussion about the
25 transition of Mr. Ferguson's clients over Mr. Stephens was

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Calder - cross

1 happening all at the same time?

2 THE WITNESS: Well, I don't recall that it all
3 happened at the same time, but I'm relatively certain it was an
4 unpleasant morning for me.

5 THE COURT: I guess I mean -- by "same time," I mean
6 the same meeting.

7 THE WITNESS: Well, it would have separate content.
8 We would have done our final warning, and then we would have
9 moved on to the next subject.

10 THE COURT: Is that the sequence that you recall?

11 THE WITNESS: I think so.

12 THE COURT: Okay. I mean -- all right. All right.

13 MR. WICKHAM: Can we ask him what was said?

14 THE COURT: Yes, that's what I was --

15 MR. FERGUSON: Your Honor, counsel's trying to use up
16 time.

17 THE COURT: No, no. Well, I think I need to know
18 them. And you're going to testify about this meeting, I take
19 it, right?

20 MR. FERGUSON: Well --

21 THE COURT: And about your interpretation of it.

22 MR. FERGUSON: The only problem is we haven't even
23 gotten to a lot of the follow-up emails, and the fact that --

24 THE COURT: A lot of the what?

25 MR. FERGUSON: Follow-up emails. And there's a

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Calder - cross

1 contract that supersedes all the contracts we've looked at that
2 is the actual governing contract of my employment.

3 THE COURT: Okay. So why don't we do this: Why don't
4 we -- we'll deal with that in a moment if we need to. And
5 we're going to end at 6 no matter what. So if we need to -- if
6 Mr. Calder is going to still be examined tomorrow, we'll do
7 that at 9:30.

8 So first, Mr. Calder, do you have a recollection --
9 because the sequence, as you remember it, was the final warning
10 meeting. And so who took the lead on that?

11 THE WITNESS: The lead on the final warning meeting
12 was taken by Mara, as far as drafting the documents, making
13 sure the documents were compliant with what we were trying to
14 do, getting legal review.

15 And then Mara and I sat down with Rick. She opened
16 the meeting. I explained how we couldn't work with colleagues,
17 we couldn't be calling people liars, thieves, we couldn't be
18 making broad accusations against colleagues, bombastic emails,
19 couldn't stand up to me and tell me when I'm meeting with him
20 that I had been F'ing with him for the last five years.

21 THE COURT: Okay. But let me ask this, just so that I
22 understand it. This final warning was basically part of the
23 whole issue relating to the transition.

24 THE WITNESS: The final email is based on a body of
25 work.

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Calder - cross

1 THE COURT: No, no, I understand that there were prior
2 interactions that Mr. Ferguson is alleged to have had where
3 there were warnings, I don't know how many, related to those
4 prior.

5 But with regard to the final warning, it was, sort of,
6 in relation to what Mr. Ferguson was doing and saying to
7 yourself in referring to Mr. Peartree, I guess that he was
8 deceived or lied to or what have you, as well as other folks.
9 It was related to those comments.

10 THE WITNESS: Yes.

11 THE COURT: And so as part of that, do you know,
12 did -- so Ms. -- I apologize -- Crain?

13 THE WITNESS: Crain.

14 THE COURT: Ms. Crain had developed a final warning
15 document.

16 THE WITNESS: Yes.

17 THE COURT: Is that something you were involved in the
18 preparation?

19 THE WITNESS: I think I reviewed it. But we go with
20 HR and legal.

21 THE COURT: All right.

22 So let's start with the final warning meeting. What
23 is your recollection of what was said during that meeting? And
24 I'm sorry, was Mr. Peartree also part of that meeting?

25 THE WITNESS: I don't believe he was.

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Calder - cross

1 THE COURT: Okay. So he hasn't called in yet.

2 THE WITNESS: No.

3 THE COURT: It's yourself, Ms. Crain, and

4 Mr. Ferguson?

5 THE WITNESS: I believe so. I don't think Bill was on
6 the phone at that point in time.

7 THE COURT: Okay.

8 THE WITNESS: I'm not positive.

9 THE COURT: All right. Go ahead.

10 THE WITNESS: Well, we had developed a final warning
11 letter, and we delivered it to Rick. We ended by saying, If
12 these behaviors happen again, your employment will be
13 terminated.

14 THE COURT: And that's part of the letter?

15 THE WITNESS: Yes.

16 THE COURT: So but in the meeting itself, had the
17 letter already been transmitted to Mr. Ferguson prior to that
18 meeting?

19 THE WITNESS: I don't know if he had it in advance or
20 not.

21 THE COURT: So when you came into the meeting -- first
22 of all, whose office was it in?

23 THE WITNESS: It was in Rick's office.

24 THE COURT: Okay.

25 So you and Ms. Crain came to Rick's office.

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Calder - cross

1 THE WITNESS: We did.

2 THE COURT: You sat down. What's the first thing that
3 happened? Did someone hand Mr. Ferguson the -- what's your
4 recollection of what happened?

5 THE WITNESS: My recollection is we went in and we
6 said, We have to have this discussion because this is a final
7 warning; putting you on written notice. Gave the written
8 notice, reviewed it. Told Rick that he had to sign it and
9 return it. And told him that any further behavior like this
10 would result in termination, as would not signing the letter.

11 THE COURT: Okay.

12 Was he given a time frame within which --

13 THE WITNESS: I believe he was.

14 THE COURT: Okay.

15 And the letter itself -- and I apologize, it may be in
16 here.

17 THE WITNESS: I don't know that it is. I'm not sure.

18 THE COURT: All right.

19 At some point if I could just get a copy of that.

20 MR. WICKHAM: We'll see if we can't get a hold of it
21 tonight, your Honor.

22 THE COURT: Okay. You know, it can be in connection
23 with Ms. -- since I made a request with regard to Ms. Crain, it
24 can be part of whatever materials you give me in connection
25 with her.

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Calder - cross

1 MR. WICKHAM: Okay.

2 THE WITNESS: She'll have it.

3 THE COURT: She can -- as part of her affidavit or
4 declaration.

5 MR. WICKHAM: We will, your Honor.

6 THE COURT: Okay?

7 All right. Do you have a recollection, when the
8 letter is presented to Mr. Ferguson, is he just told to read it
9 or does someone walk him through the letter bit by bit?

10 THE WITNESS: We walked through it.

11 THE COURT: Was that yourself?

12 THE WITNESS: That would have been Mara taking him
13 through.

14 THE COURT: Okay. So Ms. Crain, sort of, walks
15 through each of the -- walks through the warning.

16 Do you recall whether there was during -- during that
17 process, as she was walking through it, was there back and
18 forth going -- depending upon what she was pointing out?

19 THE WITNESS: I don't recall.

20 THE COURT: Okay.

21 Did you take any notes during this meeting?

22 THE WITNESS: I did not. I typically don't take notes
23 in meetings.

24 THE COURT: Okay.

25 Do you know whether Ms. Crain was taking notes?

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Calder - cross

1 THE WITNESS: I'm not sure if she was or not. She
2 usually documents meetings.

3 THE COURT: Either contemporaneous, in other words, at
4 the meeting, or at some point thereafter?

5 THE WITNESS: Correct.

6 THE COURT: Okay.

7 So what else do you recall being said at that meeting?

8 THE WITNESS: Well, we were talking about the fact
9 that we were going to transfer the investment adviser role from
10 Rick to Jeff Stephens.

11 THE COURT: This was part of --

12 THE WITNESS: This was part of the next meeting.

13 THE COURT: Oh, the next meeting.

14 But let's just finish -- I want to just close out on
15 the final warning meeting.

16 Was there any discussion about the transfer that you
17 recall, the transfer of the book of business during the final
18 warning meeting?

19 THE WITNESS: No.

20 THE COURT: Besides Ms. Crain walking through the
21 final warning notice or letter, do you recall, did you say
22 anything?

23 THE WITNESS: I did.

24 THE COURT: And what do you recall saying?

25 THE WITNESS: Well, we sort of live a company culture

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Calder - cross

1 where we have to respect each other. It's one of our key, kind
2 of, employee traits is colleagues and respect. And Rick had
3 not demonstrated that. Rick had demonstrated name-calling
4 accusations, things were investigated, he was never satisfied
5 with the investigation; so whoever was doing the investigating
6 became part of the problem. And so he was treating our
7 colleagues in a fashion that we simply cannot live with. And
8 we talked through that.

9 THE COURT: So you articulated that.

10 THE WITNESS: Absolutely.

11 THE COURT: Your view.

12 THE WITNESS: Yes.

13 THE COURT: And in connection with that, was there a
14 back-and-forth, and did Mr. Ferguson respond? What do you
15 recall Mr. Ferguson saying?

16 THE WITNESS: I don't recall that he said much.

17 THE COURT: Okay.

18 Do you recall anything else that was said during that
19 meeting?

20 THE WITNESS: I do not.

21 THE COURT: Okay.

22 Now, have you seen at any point in time, other than
23 the documentation that Mr. Ferguson has provided, anyone else
24 who provided documentation concerning that meeting? And by
25 "documentation," I mean someone who wrote an email or a report

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Calder - cross

1 or their, sort of, take on the meeting.

2 THE WITNESS: I may have. Mara may have memorialized
3 it and copied me, but I'm not certain that she did.

4 THE COURT: Okay.

5 You just don't remember one way or the other.

6 THE WITNESS: I don't remember.

7 THE COURT: Okay.

8 And so is there anything else that you can recall
9 about that meeting?

10 THE WITNESS: No.

11 THE COURT: Do you recall ever having a conversation
12 with Ms. -- and did the meeting regarding the transition occur
13 immediately after the final warning meeting?

14 THE WITNESS: Shortly thereafter, I think.

15 THE COURT: When you say "shortly thereafter," was
16 it --

17 THE WITNESS: I think it was in the same morning.

18 THE COURT: Okay. All right.

19 Maybe you took a break and then -- like, where is your
20 office compared to Mr. Ferguson's.

21 THE WITNESS: In San Francisco. I sort of float
22 between offices. And that day I was probably on the other side
23 of the office, not very close.

24 THE COURT: Okay. I'm just trying to figure out
25 whether it was -- how close in time they were. But same

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Calder - cross

1 morning, in any event.

2 THE WITNESS: Right.

3 THE COURT: Prior to the final warning meeting, do you
4 recall -- did you have any discussion with Ms. Crain about the
5 sequencing of the meetings? In other words, that after the
6 meeting we're going to have the transition meeting?

7 THE WITNESS: I don't specifically recall that, but
8 I'm certain that if she was in that meeting, that we made it
9 part of the day's plan.

10 THE COURT: Okay.

11 Was there ever discussion or thought that maybe -- of
12 having -- splitting the meeting up by more time than just
13 having it the same morning?

14 THE WITNESS: I sure had that thought. This was a
15 festering issue that we needed to deal with. And I'm kind of
16 the belief if you have a festering issue, it doesn't get better
17 until you address it.

18 THE COURT: And by "festering issue," what are you
19 talking about?

20 THE WITNESS: Oh, Rick's concern about the clients and
21 the transition. We needed to have that meeting that day.

22 THE COURT: Okay. All right.

23 And when you said you had the thought about how the
24 sequence, what did you mean by that?

25 THE WITNESS: Well, I knew the first meeting was going

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Calder - cross

1 to be adversarial. That was a given.

2 And the second meeting, based on everything that I had
3 seen, based on the allegations, based on the message we had to
4 delivery, I felt was going to be adversarial as well.

5 And if I could have split it up by a couple of days
6 without letting the issue fester, that probably would have been
7 better. But in my experience, it's usually best to take things
8 on straight up.

9 THE COURT: And when you say "fester," was there stuff
10 that you think was going to happen -- stuff that you needed to,
11 sort of, address immediately with regard to the transition?

12 THE WITNESS: Yes, we needed to get client
13 communications and meetings set up to introduce Jeff Stephens.

14 THE COURT: Okay.

15 You know, it's 6 o'clock now. So this is what we're
16 going to do: We're going to come back tomorrow at 9:30. I'm
17 going to ask you to continue to tell me about the second
18 meeting, in other words, the transition meeting, what you
19 recall about what was said. And then, Mr. Ferguson, you can
20 complete your examination. Then we'll hear from you.

21 Obviously, as I mentioned, I don't necessarily -- you
22 can point out places in your affidavit that you want me to
23 focus on in terms of my ruling. Obviously I'm going to review
24 your affidavit.

25 If there's amplification you want to give, I'm fine

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Calder - cross

1 with that. I just don't want to have repetitive things.

2 So you can step down for the day.

3 Again, you're still on cross-examination. So you
4 can't have any substantive conversations. And I'll probably
5 broaden it with either counsel here, Mr. Wickham or any
6 in-house attorneys with regard to your cross-examination.

7 So we can see you tomorrow at 9:30.

8 The way I plan on -- just so that everybody knows,
9 because I've never had this situation before, but I will --
10 Mr. Ferguson, I will allow you to basically provide a narrative
11 of what your testimony is, again, not being repetitive, and
12 then I'll allow cross-examination.

13 And Mr. Wickham, are you going to be doing the
14 cross-examination?

15 MR. WICKHAM: Briefly.

16 THE COURT: Okay. All right.

17 And so we'll power through as quickly as we can.

18 Again, I don't -- with the understanding that there's
19 still some materials that I would like to get, which I've made
20 requests for. And obviously you should meet and confer with
21 Mr. Temkin about the additional materials that where there are
22 subpoenas that are outstanding, see if you can come to some
23 sort of an understanding.

24 MR. WICKHAM: We were going to meet and confer with
25 counsel for Teros once we concluded these -- this hearing.

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Calder - cross

1 THE COURT: All right.

2 MR. WICKHAM: One request I'd have. Can we maybe put
3 a time limit on the completion of Mr. Calder's testimony?
4 We've been going quite some time.

5 THE COURT: Sure. Look, I didn't have a clock on you
6 and I don't have a clock --

7 MR. WICKHAM: I'm just suggesting.

8 THE COURT: No, no. And look, what I'm saying is
9 we're going to finish tomorrow.

10 But let me ask -- you can step down, if you'd like,
11 Mr. Calder.

12 THE WITNESS: Thank you.

13 (Witness steps down)

14 THE COURT: So, Mr. Ferguson, how much -- and I'll ask
15 you again tomorrow, because obviously I'd like you to go
16 through your materials and figure out what things you want to
17 ask.

18 MR. FERGUSON: Your Honor, maybe 45 minutes. I've
19 pared a lot of it out. I just want to make two big points.
20 And your Honor, I would point out I did almost eight hours of a
21 deposition.

22 THE COURT: I recognize that. Although some of the
23 things you may be asking about Mr. Calder may not have personal
24 knowledge of. Obviously if you want to point out things,
25 you're entitled to do that, but okay.

JA2VMARHredacted

Calder - cross

1 So we'll start tomorrow at 9:30, all right?

2 MR. WICKHAM: Thank you, your Honor.

3 THE COURT: Thank you very much.

4 We'll stand adjourned.

5 (Adjourned to October 3, 2019 at 9:30 a.m.)

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